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ABSTRACT

Over 100 of the nation's 400 Indian tribes are overlooked in the administration of Indian trust responsibility. Senate Bill 2375 establishes administrative procedure to be followed by the Department of the Interior in acknowledging a federal relationship with certain Indian tribes. On April 18, 1978 testimony was conducted before the Senate Select Committee on Indian Affairs. The bill's value and desirability were acclaimed by those testifying, but objections were raised to certain components. The National Congress of American Indians (NCAI) expressed concern that massive and indiscriminate recognition of groups claiming to be tribes might result in the "federal funding pie" being sliced too thin among beneficiary groups. The NCAI submitted 12 principles for determining tribal credentials which, if incorporated in the bill, would make it acceptable. Objection was also raised to the proposed creation of a new office in the Department of Interior to consider and process petitions for federal recognition; such an office might instead be established within the existing framework of the Bureau of Indian Affairs to avoid unnecessary duplication of personnel and to utilize expertise currently within the BIA. This document includes the bill itself, proceedings of the hearing, and informal and prepared statements of witnesses appearing. (DS)

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RECOGNITION OF CERTAIN INDIAN TRIBES

ED160277

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HEARING

BEFORE THE

UNITED STATES SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

S. 2375

TO ESTABLISH AN ADMINISTRATIVE PROCEDURE AND GUIDELINES TO BE FOLLOWED BY THE DEPARTMENT OF THE INTERIOR IN ITS DECISION TO ACKNOWLEDGE THE EXISTENCE OF CERTAIN INDIAN TRIBES

APRIL 18, 1978

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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RECOGNITION OF CERTAIN INDIAN TRIBES

TUESDAY, APRIL 18, 1978

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington D.C.

The committee met, pursuant to notice, at 9:40 a.m., in room 5110, Dirksen Office Building, Senator James Abourezk (chairman of the committee) presiding.

Present: Senators Abourezk, Metzenbaum, and Hatfield.

Staff present: Alan Parker, chief counsel; Barbara Berger, staff attorney; and Keith Kennedy, professional staff member.

Chairman ABOUREZK. The hearing will come to order.

This is a hearing on recognition of Indian tribes. The number of the legislation is S. 2375. Because we have a great many witnesses and we are not going to be able to go past a little before noon—the rule is 11:30—I will not read my prepared statement. I will put my prepared statement in the record without reading it, as an example for all the witnesses who are about to testify today.

I also place in the record a copy of S. 2375, the bill under consideration this morning.

[The opening statement of Chairman Abourezk and S. 2375 follow:]

(1)

OPENING STATEMENT

OF

SENATOR JAMES ABOUREZK

One of the greatest needs in the field of Indian Law today is for a clear-cut and uniform method to be used in determining which Indian tribal groups are to be included within the Federal-Indian relationship. Failure on the part of the United States to acknowledge the existence of certain Indian tribes has not been premised on grounds of law, justice, or equity, but rather has been due to a lack of clarity and consistency in those federal laws and regulations relating to the standards and criteria upon which this relationship should be based. The result of this uncertainty is that today over 100 of the Nation's 400 tribes are totally overlooked in the administration of the Federal Indian trust responsibility.

S. 2375 establishes an administrative procedure and guidelines to be followed by the Department of the Interior in its decision to acknowledge a federal relationship with certain Indian Tribes. It does not address the needs of tribes whose relationship with the federal government has been terminated. That issue will be the subject of future legislation. This bill is not the answer to a long and confused issue of law and fact, nor is it an attempt to resolve significantly underlying policy questions which need to be worked out over a longer period of time. Rather, the intent of this bill in initiating a process for determining tribal existence is to fulfill a longstanding federal responsibility, the neglect of which is documented in the American Indian Policy Review Commission's report. The criteria specified in this bill which will be applied by the Interior Department in evaluating all petitions from tribal groups have been carefully developed in the context of the history of the federal relationship.

It is important to note that this bill is primarily concerned with three things: First, it directs the Secretary of the Interior to establish a separate office within that department for the purpose of resolving the question of the existence of certain Indian tribes. Second, the bill gives Congressional guidance to the Executive Department on what the Federal policy should be in addressing this issue. And third, the bill expands the Secretary of the Interior's authority to reestablish relationships with certain Indian tribal groups. The Interior Department has been making a serious attempt to do so through the regulation process and I commend the Administration's policy of starting with a clean slate and refusing to be bound by confusing and conflicting statements of the past. However, it will be several months before those regulations are adopted and implemented and even then it is unlikely that the regulations will encompass within the Federal-Indian relationship the majority of those Indian tribal groups who need assistance the most.

S. 2375 continues to base acknowledgement of tribal existence upon the establishment of a government to government relationship. It does not initiate a process for identifying all Indians in the United States, but does establish a mechanism for determining which Indian tribal groups are to be included within the Federal-Indian relationship. Questions involving such areas as the status of a tribe relative to surrounding states, the range of services to be delivered, the definition of tribal membership, and the issue of a land base will be the subject of negotiations which can take as long as necessary.

This bill has been criticized because it does not direct the Secretary of the Interior to establish a reservation for all newly acknowledged tribes, including placing lands in trust. However, as a matter of policy issue at stake here, it is not a necessary provision and the reservation status of tribes shall be the subject of a case by case determination. It should be noted - that there are only about 27 unrecognized tribes which have tribal land holdings.

There have also been concerns expressed that this bill will encourage many tribes whose existence has not been previously acknowledged to assert claims under the Nonintercourse Act. However, the Committee has researched this question and feels confident that the majority of such claims have already been identified and this bill will not result in identification of additional tribes who will then file land claims. Further, a determination that a petitioning group is a tribe within the scope of this Act does not affect such a group's right to assert a claim under the Nonintercourse Act, nor is it intended to. The Courts have shown that if a tribe has a claim under the Nonintercourse Act, the status of the tribe will be determined in the judicial process of the claim.

Finally, I would like to emphasize that a bill of this nature is long overdue. The Federal Government has neglected its responsibility long enough, and it is time to afford an opportunity to Indian tribal groups to resolve once and for all the issue of whether they are a tribe and should be so treated by the United States.

95TH CONGRESS
1ST SESSION

S. 2375

IN THE SENATE OF THE UNITED STATES

DECEMBER 15, 1977

Mr. ABOUREZK introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

A BILL

To establish an administrative procedure and guidelines to be followed by the Department of the Interior in its decision to acknowledge the existence of certain Indian tribes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS

SEC. 2. (a) The Congress, after careful study of the history of American Indian policy, finds that:

(1) There are numerous Indian tribes who have not been accorded a Federal relationship, including the services and protections provided pursuant to the Federal-Indian trust responsibility. This failure to acknowledge a Federal relationship with these tribes has

not been premised on grounds of law, justice, or equity, but rather has been due to a lack of clarity and consistency in those Federal laws and regulations relating to the standards and criteria upon which this relationship should be based.

(2) Failure on the part of the United States to acknowledge a Federal relationship with certain Indian tribes has created confusion regarding eligibility for governmental services, such uncertainty leaving many tribes otherwise eligible for services without adequate governmental assistance.

(3) In order to equitably determine which Indian tribal groups are to be included within the Federal-Indian relationship, an administrative procedure and policy guidelines to be followed by the Department of the Interior in its decision to acknowledge the existence of certain Indian tribes must be established. This acknowledgment must continue to be premised upon the establishment of a government-to-government relationship with Indian tribes.

(4) Any mechanism established by Congress must be based upon carefully developed criteria which will afford petitioning tribal groups an opportunity to resolve once and for all the issue of whether they are a tribe and should be so treated by the United States. Such

congressional action shall not entail a diminishment of services and assistance to those tribes whose existence is already acknowledged.

SEC. 3. (a) As used in this Act, the term—

(1) "Indian" means a member of or a descendant of any North American Indian tribal group or Alaska Native village.

(2) "Secretary" means the Secretary of the Interior.

SEC. 4. (a) There is hereby established within the Department of the Interior a special investigative office (hereinafter referred to in this Act as the "Office"), the duties of which are set forth below in section 4(b). The Office shall be headed by a Director who shall be appointed by the Secretary, and who shall be compensated at the rate provided for level III of the Executive Schedule pay rates (5 U.S.C. 5314). The Director is authorized to appoint and fix the compensation of such employees as may be necessary to carry out the functions of the Office.

(b) It shall be the function of the Office, among others, to—

(1) contact, within the twelve-month period following the date of enactment of this Act, all known Indian tribal groups in the United States whose existence has not been previously acknowledged by the Department of

the Interior, including those listed in chapter 11 of the American Indian Policy Review Commission report. The Office shall inform all such tribal groups of their right to petition for an acknowledgment of tribal existence by the Federal Government, and shall report the results of its efforts in connection therewith to the appropriate committees of the Congress, the Secretary, and the Assistant Secretary for Indian Affairs;

(2) solicit statements from unacknowledged tribal groups, provide necessary technical assistance for the preparation of those statements, investigate the petitioning tribal group's historical background and Indian identity for verification purposes, report findings of such investigation to the Secretary, assist tribes in the organization and enrollment of their members, and refer tribal concerns to the appropriate departments or agencies of the Federal Government; and

(3) review all petitions for acknowledgment of tribal existence presently pending before the Bureau of Indian Affairs and to allow the petitioning group to revise the petition if necessary to satisfy the guidelines specified in this Act. The priority date of the amended petition shall be that of the original filing date.

(c) After receiving any petition for acknowledgment of tribal existence, without regard to the form thereof, the

Office shall offer technical assistance to the group to investigate its status. Such investigation shall at least include attention to the definitional factors set forth in section 5 of this Act. All correspondence received by the Bureau of Indian Affairs from unacknowledged tribal groups shall be directed to, and routed through, the Office.

(d) Within two years of receipt of an Indian tribal group's petition, the Office shall submit a written preliminary report to the petitioning Indian group. Upon receipt of this report, the group shall have sixty days to respond, including an opportunity to present oral argument to rebut the evidence relied upon. The Office shall have thirty days after petitioner's response to prepare a final report to be submitted to the petitioner and the Secretary, such report to be published in the Federal Register. The Secretary shall endorse or reject the findings of the Office contained in such report within six months following the receipt by him of such report.

(e) If the Secretary determines, on the basis of such report, that any such group is an Indian tribal entity within the purview of this Act, the Secretary shall designate such group as a federally acknowledged Indian tribe. Upon the publication by the Secretary of that fact in the Federal Register, such tribe shall be entitled to all the rights, privileges, immunities, benefits, and other services which other

federally acknowledged Indian tribes are eligible to receive by reason of their status.

(f) Any determination by either the Office or the Secretary that a group is not an Indian tribe shall be made in writing to the petitioning group and shall specify why the group does not conform to the definitional factors in section 5 of this Act. Any decision by the Secretary shall be reviewable in the United States district court with the burden of proof on the United States to establish that the petitioners do not meet the criteria specified in this Act. Legal fees shall be paid by the United States to any petitioning group whose tribal existence is affirmatively determined as a matter of law and fact by the court.

(g) A denial of any petition shall not preclude an Indian group from resubmitting a petition at any time in the future.

(h) Upon certification by the Secretary that a group is an Indian tribe, the tribe shall develop a membership roll. The process of determining the roll shall entail public notices, the formation of tribal committees to hear individuals' claims of direct tribal descent of a specified degree, and written statements of enrollment certification which must be recorded by the Bureau of Indian Affairs as well as by the tribe. At the request of the tribe, the Office shall provide technical assistance for the development of a membership roll.

(i) Annual budget requests for appropriations for any fiscal year from the Department of the Interior shall state the funds which have been directed to servicing those tribes whose existence was acknowledged in the preceding fiscal year.

SEC. 5. (a) The following definitional factors shall be relied upon by the Office and the Secretary in determining whether a group is an Indian tribe for the purposes of this Act. The group shall conform to factors (1) and (2) and at least one additional factor:

(1) the group has been identified as "Indian, Native American, or Aboriginal" consistently and for a protracted period of time, but in any event for a period of no less than forty-four years. Such continuing Indian identity may include identification as a division of, combination of, or confederation with, other specific Indian tribes. Evidence to be relied upon in determining the group's continuing Indian identity shall include but not be limited to any of the following:

(A) repeated identification as Indian by Federal authorities;

(B) longstanding relationships with State governments based on identification of the group as Indian;

(C) repeated dealings with a county, parish, or

other local governments in a unique relationship based on the group's Indian identity;

(D) identification as Indian by records in courthouses, churches, or schools;

(E) identification as Indian by anthropologists, historians, or other scholars;

(F) identification as Indian in newspapers and books;

(G) any other evidence deemed relevant by the Office or the Secretary.

(2) the group exhibits evidence of a longstanding tribal governmental influence or authority over the members of the group. This evidence shall show that the group has exercised political influence or authority over its members through a tribal council or other structure which the group has used as its own form of government or as a means to determine its membership. Such evidence shall include traditional social or political structures or organizations unique to American Indians.

(3) the group utilizes an identified American Indian language or shows other clear indications of Indian cultural retention.

(4) the group has held collective rights in tribal lands or funds, whether or not it was expressly designated a tribe.

(5) the group has been treated as an Indian tribe by other Indian tribes or groups. This factor shall be evidenced by written statements from presently acknowledged tribes stating that they have related to the unacknowledged tribal group for purposes connected with any intertribal activity.

(6) the group has had treaty relations with the United States, particular States, or preexisting colonial or territorial governments. "Treaty relations" shall include any formal relationship based on a government's acknowledgment of the Indian group's separate or distinct political status. Satisfaction of this criterion shall be prima facie evidence of tribal existence.

(7) the group has been identified or referred to as an Indian tribe or designated Indian by an Act of Congress or Executive order which provided for, or otherwise affected or identified the governmental structure, jurisdiction, or property of the tribal group in a special or unique relationship to the Federal Government. Designation of a group as Indian by such Act of Congress or Executive order shall be prima facie evidence of tribal existence.

(b) The Secretary shall have the authority to acknowledge any group which he determines is Indian.

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SEC. 6. Upon enactment of this Act, the Secretary shall publish in the Federal Register a list of all federally acknowledged Indian tribes, such list to be updated and published annually.

SEC. 7. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Chairman ABOUREZK. If witnesses want to read their prepared statements, I would ask them to do that after 11:30. Prior to that, I would ask the witnesses to put in their own words how they feel about the legislation, whether it should be changed, vetoed, or whatever. That will leave time for questions for all the witnesses who are scheduled today.

Our first witness will be George Goodwin, Deputy Assistant Secretary of the Interior—Indian Affairs.

STATEMENT OF GEORGE GOODWIN, DEPUTY ASSISTANT SECRETARY OF THE INTERIOR—INDIAN AFFAIRS, ACCOMPANIED BY SCOTT KEEP, ASSOCIATE SOLICITOR'S OFFICE, INDIAN AFFAIRS, AND JOHN SHAPARD, TRIBAL GOVERNMENT SPECIALIST, OFFICE OF TRIBAL GOVERNMENT SERVICES

Mr. GOODWIN. Mr. Chairman, I have with me this morning Scott Keep, from our Associate Solicitor's Office in Indian Affairs; and also John Shapard, Tribal Government Specialist from our Office of Tribal Government Services.

Briefly, the Department of the Interior is currently in the process of developing administrative procedures on the acknowledgment question that is addressed in S. 2375. I would like to inform the committee that a great deal of consultation has gone on on the subject with tribal leaders throughout the country: Federal and State officials, and also with tribal government groups.

We have conferred with a number of petitioners also, as well as members of your staff, regarding the recognition question, and legal representatives of the petition groups. Further, a national conference was held recently jointly with the National Congress of American Indians and our staff on the question of Federal recognition. That meeting was concluded very recently.

I would like to emphasize at this point that we feel there is a great deal of cooperation expressed with those Indian tribes and Federal agencies on the overall recognition question. I think some of the cooperation we have seen is unprecedented. I think we are moving forward to finding an equitable solution of a longstanding problem affecting all Indians.

We do not support S. 2375 as introduced. We would not object to a bill which specifically confirms the Secretary of Interior's authority to recognize additional Indian tribes. We believe the Secretary has that authority, but there is no specific legislative authority on the subject.

There are other basic concepts in S. 2375 that we feel would be difficult to administer. One area is the establishment of a separate office in the Interior Department to consider and process petitions for Federal recognition. While we agree that there should be a separate office, we feel that this could be done at the Bureau level and that would not duplicate the additional staff that we currently have in the Bureau.

Also, the bill mandates the Interior Department to seek out and assist groups which may be interested in recognition. We feel that our regulations address this issue. We feel that much can be done with the various groups that have petitioned already, as far as informing them of what our regulations provide.

An additional area provides that, upon acknowledgment by the Secretary, that a petitioning group is a tribe, the tribe shall develop a membership roll. We believe that it is necessary for the group to establish at least a partial roll prior to recognition so that various characteristics of the tribal government can be established at the time the petition is received.

I would like to say in conclusion that we do not object to legislation specifically confirming the Secretary's authority. However, we cannot support S. 2375 as introduced.

This concludes my brief summary. I, and my colleagues, will be pleased to try to address any questions you might have.

Chairman ABOUREZK. Without objection, your written statement will be inserted into the record.

[Mr. Goodwin's prepared statement follows:]

STATEMENT OF GEORGE GOODWIN, DEPUTY ASSISTANT SECRETARY OF THE INTERIOR-INDIAN AFFAIRS, ON S. 2375, A BILL "TO ESTABLISH ADMINISTRATIVE PROCEDURE AND GUIDELINES TO BE FOLLOWED BY THE DEPARTMENT OF THE INTERIOR IN ITS DECISION TO ACKNOWLEDGE THE EXISTENCE OF CERTAIN INDIAN TRIBES", BEFORE THE HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE, APRIL 18, 1978.

Mr. Chairman and Members of the Committee, I am pleased to present the views of the Interior Department on S. 2375.

S. 2375 would establish an office within the Department of the Interior which would be responsible for communicating with all known tribal groups and informing them of their right to petition the Federal government for acknowledgement. That office would then review all such petitions in accordance with standards set forth in section 5 of the bill.

The Department of the Interior is currently in the process of developing administrative regulations on the recognition or acknowledgement question. We expect to have these published in final form by August.

The amount of consultation and discussion with tribal and other groups on Federal recognition is unprecedented. Since June 16, 1977, our records show a total of 240 meetings, discussions and conversations about Federal recognition with other Federal agencies, state government officials, tribal groups, petitioners, congressional staff members, and legal representatives of petitioning groups; 60 written comments on the proposed regulations (which we shared with the Select Committee staff); and a national conference on Federal Recognition attended by approximately 350 representatives of Indian tribes and organizations.

It might be emphasized here that this is one project in which the Congress, the administration, the national Indian organizations and many tribal groups

are cooperating to find an equitable solution to a longstanding and very difficult problem affecting all Indians.

Although we do not support enactment of S. 2375 as introduced, we would not object to a bill which specifically affirms the Secretary of the Interior's authority to recognize additional Indian groups. While we believe that the Secretary has that authority, there is no specific legislative authorization on the subject.

There are several basic concepts embodied in S. 2375 which would make it difficult, if not impossible, to administer.

S. 2375 establishes a separate office in the Interior Department to consider and process petitions for Federal recognition of Indian groups. While we agree that there should be a separate and distinct office for handling Federal recognition matters, we feel that it can and should be established within the existing administrative framework of the Bureau of Indian Affairs. We believe that establishment of such an office outside the Bureau would be an unnecessary duplication of personnel, since much of the needed expertise is currently within the Bureau.

S. 2375 also mandates the Department to seek out and assist groups which may be interested in recognition, thus tacitly placing on the Department the burden of acquiring additional groups (or tribes) to be served. An unfavorable decision would be reviewable by the United States District Court with the burden of proof on the Department to prove that the petitioners do not exist as Indian tribes. To prove such a negative assertion is extremely difficult. We strongly believe that the initiative

and the burden of proof should be on the petitioning group. We also feel that a system of administrative appeals should be available before the matter is taken to court.

S. 2375 provides that upon acknowledgement by the Secretary that a petitioning group is an Indian tribe, the tribe shall develop a membership roll and at the request of the group the Department shall provide technical assistance in the development of the roll. We believe that it is necessary for a group to establish at least a partial membership roll of known members prior to recognition by the United States. Without such documentation, it would be difficult, if not impossible, to verify the Indian character of the group and to demonstrate how the group exercies governmental influence over its membership or that the membership exists in tribal relations.

In conclusion, we would not object to legislation specifically confirming the Secretary's authority to recognize Indian groups. However, we cannot support enactment of S. 2375 as introduced.

This concludes my statement. My associates and I will be pleased to respond to any questions the Committee may have.

Chairman ABOUREZK. I would like to ask the committee counsel to ask some questions which we have prepared.

Mr. PARKER. Mr. Goodwin, under the procedures which are proposed in BIA's regulations: Would you have any estimate on how long it would be before you could process those petitions presently pending before the BIA?

Mr. SHAPARD. The active petitions which we have presently—about 45—I believe could be processed and completed—absent litigation—in 2 years.

Mr. PARKER. Two years from the time you actually initiate the process?

Mr. SHAPARD. That is correct.

Mr. PARKER. What is your present timetable for publishing and implementing the final regulations?

Mr. SHAPARD. We expect to have published the regulations, as proposed, by June and have final regulations by August.

Mr. PARKER. Is there any other basis, other than availability of funds, on which you have decided not to take the affirmative procedures which are proposed in the bill? In other words, you have spelled out certain procedures which you intend to take under regulatory process.

Mr. SHAPARD. We do intend to modify the regulations to some extent to provide a little more affirmative action. We have no problems with affirmatively contacting and trying to locate groups.

We do not feel that the burden of proof should be on the Bureau, for several reasons, in order to go out and actively assist the group in doing their research. One of the reasons would be: If we did that and found them ineligible, there would be doubt cast immediately over the findings.

Mr. PARKER. Mr. Goodwin, although the regulations speak of an entitlement to services, do you not agree that the finding of entitlement necessarily implies that you are establishing a government-to-government relationship with the petitioning group?

Mr. GOODWIN. Our present proposed rules right now are not clear on that issue. We propose in our final draft to amend the regulations to make that point very clear.

Mr. PARKER. The Department's position right now is that what you are actually doing is establishing a government-to-government relationship.

Mr. GOODWIN. That is right.

Mr. PARKER. Are there any steps which the Interior Department has been contemplating which you would take after acknowledgment of a petitioning group's status to insure that the extension of services to new groups will not diminish benefits and services presently being delivered to those tribes that presently have a relationship with the Government?

Mr. GOODWIN. Briefly, the steps that would be taken is that any tribe that would come on under the recognition rules would be recognized. We would have to go through the regular budget process and either ask for additional funds through a supplemental appropriation or budget amendment. But we would not or do not contemplate adding or taking funds or diminishing the total amount of funds that we currently have available for new tribes.

Mr. PARKER. Clearly, all tribal groups which would be petitioning either under regulation procedures or the procedures proposed in the legislation would not have the same service needs nor have a need to assume the same scope of responsibility for self-government. Does the Deparrment of the Interior have any projections on what would be your procedures to determine the range of service needs?

Mr. GOODWIN. Currently we have no procedures other than in our 1980 budget process where we anticipate going to a location budget process. We would work with individual groups at new locations and build up a base funding through that process.

Mr. PARKER. I guess what I was getting at is that factual circumstances and the attributes of each group obviously are going to vary from group to group. These factual circumstances and attributes would logically dictate the nature of services, et cetera, which the tribe would be entitled to upon affirmative action upon petition.

Would you agree with that?

Mr. GOODWIN. We would look to each tribe on a case-by-case basis and determine the scope of services each tribe would need. All tribes obviously would not be entitled to all services.

A good example would be a tribe coming on board. If it does not have a land base, for instance, it would not need realty services or forestry services.

Mr. PARKER. This is really in response to publicity surrounding this process where there are some who have projected that there would be a whole plethora of new reservations established after this recognition process took place.

My question really was that obviously that is not going to be the case. Would you agree with that?

Mr. GOODWIN. That is right. I would agree.

Mr. PARKER. Finally, in case that there is a dispute between a tribe which you have affirmatively acted upon a petition for in the Secretary's office regarding particular eligibility for a specific service: How do you envision resolution of that kind of dispute?

Mr. GOODWIN. I would ask Mr. Shepard to address our proposed regulations on that point.

Mr. SHAPARD. I am sorry; I do not understand the question. If we recognize the tribe and then they request services for which they find they are not eligible?

Mr. PARKER. That is right.

Mr. SHAPARD. They would have the appeal procedure. They would be able to appeal the decision by the usual appeal route.

Mr. PARKER. Another requirement in your regulations is that petitioning groups submit a list of all current members of the group and a copy of each available former list of members. For tribes that are now recognized: Does the Department of the Interior require a comprehensive membership list be filed with the Department?

Mr. SHAPARD. No; but we believe the situation to be somewhat different here, Mr. Parker. We feel that, in light of the accountability that the Congress is rightfully requesting that the Bureau take note of, in order to be able to better serve these people and know who we are serving and to assure ourselves that we have a tribal government, we would need a membership list.

Mr. PARKER. Thank you.

Senator METZENBAUM [acting chairman]. Senator Hatfield?

Senator HATFIELD. Thank you, Mr. Chairman.

Mr. Goodwin, let me ask you to restate, perhaps in the context of our own situation in Oregon: If an unrecognized group is recognized by the procedures established in the bill or by regulations, does such recognition then carry with it hunting and fishing rights exempt from State regulation?

Mr. GOODWIN. I believe the question on hunting and fishing rights would be addressed by either the treaty or Executive order in certain cases.

No; the recognition would not automatically establish hunting and fishing rights. There would have to be some other basis for recognition of those rights.

Senator HATFIELD. If a previously unrecognized tribe is recognized in Public Law 83-280 States, such as Oregon, and the tribe has land holdings which are taken into trust: Who will have jurisdiction in the trust?

Mr. GOODWIN. I would like to turn to our legal counsel on that.

Mr. KEEP. Senator, I think that is a very difficult question. At this time, I would like to offer to submit a written response at a later time in more detail on that.

[Mr. Keep had not responded to the question at the time this publication went to press.]

Senator HATFIELD. Very good.

As you know, we have some rather important questions that would fall into that particular situation.

Given the serious problems surrounding matters of jurisdiction, do you envision some consultation process with tribal, Federal, and State authorities prior to accepting land into trust?

Mr. GOODWIN. Currently we do not have any procedures in place. As a result of litigation now pending, we are establishing procedures and regulations regarding taking land into trust. We are moving forward with that.

Senator HATFIELD. How soon do you expect such procedures to be developed and in place?

Mr. GOODWIN. I will have to consult with our legal advisor on that.

Mr. KEEP. Senator, the Division of Indian Affairs and the Solicitor's Office are currently reviewing an initial draft proposed by field staff of the BIA. We have not completed our review on it. My initial understanding from the staff attorneys who are working on it is that the Bureau would like, because of the importance and variety of questions that get presented to it, a fairly lengthy comment period, once they are published.

I am not sure, but I would anticipate that it may be several months yet before they are published. Then it might be a number of months thereafter before they are finalized.

It is an important question, and we appreciate it. That is why I think the Bureau anticipates a fairly lengthy comment period.

Senator HATFIELD. How would recognition of a previously unrecognized tribe affect land claims which the tribe might be processing?

Mr. KEEP. I do not think, in view of the Passamaquoddy case, that recognition is a factor on that.

Senator HATFIELD. Thank you.

Senator METZENBAUM. Thank you very much. I assume you will be available to answer pertinent questions.

Mr. GOODWIN. Yes, sir.

Senator METZENBAUM. We will now hear from another panel: Veronica Murdock, Tom Tureen, and Leonard Tomaskin.

Chairman ABOUREZK. We will ask the panel to come up now. Welcome to the committee. Please proceed.

STATEMENT OF TOM TUREEN, NATIVE AMERICAN RIGHTS FUND

Mr. TUREEN. Thank you, Senator.

My clients in general support the idea behind this legislation. I have a couple of things I want to say about it.

As you well know, many of my clients have suffered from years of neglect by the Federal Government. These are tribes that are rightfully entitled to the protection and support which the Federal Government supplies Indian tribes. The legislation which is proposed, if it were passed, would guarantee an end to that form of discrimination.

I think it is important for everyone to understand, however, that the Department of the Interior does already have authority to acknowledge the existence of or recognize tribes which are not currently receiving services or protection from that Department. I think the Passamaquoddy case made it clear that the Federal Government has this authority. That is a process which should be moving ahead.

One ironic effect of this legislation has been, I think, to slow down that process in part and to speed it up in part. It has prodded the Government to prepare and propose regulations. I think, now with the bills in Congress, in some ways it has provided the Department of the Interior with a convenient excuse for not publishing those regulations. I understand that they are not scheduled to come out for several months.

In any event, there are two particular aspects of the bill that I would like to address. Both have to do with money.

First of all, in terms of the petitioning process, section 462 provides for the Department of the Interior to assist tribes in the process of preparing a petition for recognition. I think that it would be far better if the bill included a provision that actually made funds available to the tribes for conducting their own research. It has been our experience in the Native American Rights Fund that this process is very expensive. We do not yet know precisely—and we won't know until we are further into the process—what degree of specificity the Department will require, whether they are acting under their own regulations or under legislation proposed by Congress.

The process calls for expert evidence prepared by experts—extensive legal and historical research. Many tribes do not have the resources to do that. The Native American Rights Fund has been able to provide that assistance for a number of tribes, but it is very expensive and there is no guarantee that we will continue to have the private support that we have had in the past to make that possible.

What I would suggest is a contracting provision similar in form to the model provided by the Indian Self-Determination Act, Public Law 93-638, which would make it possible for the Department of

the Interior to contract with tribes to conduct and prepare the necessary information for presentation to the Department.

The other point I want to make is on money also. Once they begin receiving services from the Department, I think it is very important for tribes across the country to continue. New tribes, as they get added to the rolls, should not cut into the services already provided to other tribes. This bill provides a mechanism for avoiding that problem.

I would suggest, though, that there is already a model for doing that outside of this bill. That is the model that was followed after the Passamaquoddy and Penobscot tribes were recognized. Those tribes were provided for by means of a line item appropriation. That was the first time they officially began receiving services from Interior; after their existence was acknowledged.

The final brief point I have is that I think this legislation, or any regulations that the Department promulgates, should make it clear that the procedure that is laid out in these regulations does not exclude any rights that any Indian people might have under the Indian Reorganization Act. That is the statute that was adopted in 1934. It provides certain limited rights for Indians who are not presently receiving rights. Those avenues should not be foreclosed.

With that, I will stop and turn it over to Ms. Murdock.

I should say that some of my clients are here with specific comments they would like to make.

STATEMENT OF VERONICA MURDOCK, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Ms. MURDOCK. Mr. Chairman, my name is Veronica Murdock, and I am the president of the National Congress of American Indians. I would like to express my appreciation for the opportunity to testify before you on behalf of the National Congress of American Indians on S. 2375, a bill to establish guidelines and procedures for the recognition of Indian tribes.

Chairman ABOUREZK. The National Congress of American Indians is a good group. Congratulations on your presidency.

Ms. MURDOCK. In the protection and preservation of Indian rights, a most essential axiom is that the Federal Government acknowledge and recognize that tribes exist as permanent governing entities. The recognition of a tribe's existence is the fundamental step toward the fulfillment of the U.S. obligation to Indian people. Recognition means recognition of certain rights. It also means that the United States acknowledges its obligation to protect the rights of a particular Indian tribe.

The United States does not have sound procedures for extending recognition to Indian tribes. On an arbitrary and circumstantial basis, the Federal Government has failed to recognize many tribes that deserve to be recognized.

The absence of clear Federal policy and procedures pertaining to the recognition of certain tribes' rights to eligibility for Federal services, programs, funds, and trust protection has plagued Indian affairs for some time. This neglect must stop, and the United States must take its obligation to protect the rights of all Indian tribes seriously.

However, we are aware that there are groups of people, among which there may be some Indian people, which, for reasons of identity of economic benefit, claim to be Indian tribes. Our leaders have expressed concerns that indiscriminate recognition of such groups as Indian tribes could have adverse impact on all Indian tribes. Our leaders have expressed concern that massive and indiscriminate recognition of groups as Indian tribes could diminish the significance of tribal claims to sovereign rights.

They have expressed fear that massive and indiscriminate recognition would mean the diminishment of the significance of Federal recognition, making Federal recognition vulnerable to termination—a realistic hazard under the present administration. And they have expressed concern that the Federal Government is not likely to expand the Federal budget in proportion to the expansion of Federal recognition, which would mean slicing the "Federal funding pie" too thin among beneficiary or entitlement groups.

Critics of NCAI's caution in this matter attempt to paint the leaders of federally recognized tribes as pawns of the Federal Establishment who refuse to share abundant Federal resources with less fortunate Indian brothers.

This is simply not true. NCAI has consistently and actively supported what we felt were genuine Indian tribes to achieve their rightful place on the rolls of Federal recognition. In our primary voting membership—tribal membership—some 20 nonfederally recognized tribes are included.

Nor do we apologize for our caution and our vigilance in this matter. We insist on the safeguards to protect our status as Indian tribes and our sovereign rights, as our leaders have protected them for years at great cost to our tribes.

Our concerns regarding the Federal Indian budget are valid. The infamous litany of woes reflects the federally recognized tribes' plight: The highest infant mortality rate, the lowest life expectancy, the highest unemployment rate, the lowest per capita income, et cetera. That does not reflect any bottomless well of Federal resources that we selfishly refuse to share.

Our constant concern has been that Federal recognition must be extended to tribes in a fair and consistent way which will protect and preserve the full rights of all tribes, and that the extension of recognition must be accompanied by a reaffirmation of tribal rights and increases in appropriation levels to match increasing levels of services to tribes.

On March 28–30, 1978, the National Congress of American Indians sponsored a national conference on Indian recognition, which was graciously hosted by the United Southeastern Tribes in Nashville, Tenn. That conference was designed to bring together leadership of federally recognized tribes and of nonfederally recognized tribes for communication and understanding, and for the membership of NCAI's executive council to adopt a position statement that would be acceptable to the recognized and nonrecognized tribes.

In that meeting, I believe we accomplished more than this legislation or the Interior Department's proposed regulations could ever hope to. In that conference, we began the process of understanding each other, and we arrived at a position paper that met with the approval of both

recognized and nonrecognized tribes. That position statement, encompassing 12 principles to guide the development of the U.S. policy toward recognition, is attached to my written statement.

The question is: How do you determine whether a group is an Indian tribe? The NCAI has its own methods for determining tribal credentials on a case-by-case basis. We do not need the Federal Government to tell us. The Senate bill has a clear and consistent set of standards to help the Government determine what is an Indian tribe for purposes of Federal recognition. But we are not satisfied that these standards can provide the necessary safeguards to protect tribal soversignty and status.

For this reason, the National Congress of American Indians has voted to oppose S. 2375. The resolution reads as follows:

"The National Congress of American Indians opposes S. 2375 unless tribes are properly approached and cousulted."

It is my pleasure to sit on this panel with the author of the above resolution, Mr. Leonard Tomaskin. He may wish to address that further.

Mr. Chairman, that concludes the statement of the National Congress of American Indians. Thank you.

Chairman ABOUREZK. Thank you, Veronica. Your prepared material will be entered in the record.

[The material submitted by Ms. Murdock follows:]

TESTIMONY OF THE NATIONAL CONGRESS OF AMERICAN INDIANS CONCERNING S.2375, A BILL TO ESTABLISH GUIDELINES AND PROCEDURES TO RECOGNIZE HERETOFORE UNRECOGNIZED TRIBES, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS OF THE UNITED STATES SENATE, APRIL 18, 1978.

MR. CHAIRMAN, MY NAME IS VERONICA MURDOCK, AND I AM THE PRESIDENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS. I APPRECIATE THIS OPPORTUNITY TO TESTIFY BEFORE YOU ON BEHALF OF N.C.A.I. ON S.2375, A BILL TO ESTABLISH GUIDELINES AND PROCEDURES FOR THE RECOGNITION OF INDIAN TRIBES.

IN THE PROTECTION AND PRESERVATION OF INDIAN RIGHTS, A MOST ESSENTIAL AXIOM IS THAT THE FEDERAL GOVERNMENT ACKNOWLEDGE AND RECOGNIZE THAT TRIBES EXIST AS PERMANENT GOVERNING ENTITIES. THE RECOGNITION OF A TRIBE'S EXISTENCE IS THE FUNDAMENTAL STEP TOWARD THE FULFILLMENT OF THE UNITED STATES' OBLIGATION TO INDIAN PEOPLE. RECOGNITION MEANS RECOGNITION OF CERTAIN RIGHTS. IT ALSO MEANS THAT THE UNITED STATES ACKNOWLEDGES ITS OBLIGATION TO PROTECT THE RIGHTS OF A PARTICULAR INDIAN TRIBE.

THE UNITED STATES DOES NOT HAVE SOUND PROCEDURES FOR EXTENDING RECOGNITION TO INDIAN TRIBES. ON AN ARBITRARY AND CIRCUMSTANTIAL BASIS, THE FEDERAL GOVERNMENT HAS FAILED TO RECOGNIZE MANY TRIBES THAT DESERVE TO BE RECOGNIZED.

THE ABSENCE OF CLEAR FEDERAL POLICY AND PROCEDURES PERTAINING TO THE RECOGNITION OF CERTAIN TRIBES' RIGHTS TO ELIGIBILITY FOR FEDERAL SERVICES, PROGRAMS, FUNDS, AND TRUST PROTECTION HAS PLAGUED INDIAN AFFAIRS FOR SOME TIME. THIS NEGLECT MUST STOP, AND THE UNITED STATES MUST TAKE ITS OBLIGATION TO PROTECT THE RIGHTS OF ALL INDIAN TRIBES SERIOUSLY.

HOWEVER, WE ARE AWARE THAT THERE ARE GROUPS OF PEOPLE, AMONG WHICH THERE MAY BE SOME INDIAN PEOPLE,, WHICH FOR REASONS OF IDENTITY OF ECONOMIC BENEFIT, CLAIM TO BE INDIAN TRIBES. OUR LEADERS HAVE EXPRESSED CONCERNS THAT

INDISCRIMINATE RECOGNITION OF SUCH GROUPS AS INDIAN TRIBES COULD HAVE ADVERSE IMPACT ON ALL INDIAN TRIBES. OUR LEADERS HAVE EXPRESSED CONCERN THAT MASSIVE AND INDISCRIMINATE RECOGNITION OF GROUPS AS INDIAN TRIBES COULD DIMINISH THE SIGNIFICANCE OF TRIBAL CLAIMS TO SOVEREIGN RIGHTS. THEY HAVE EXPRESSED FEAR THAT MASSIVE AND INDISCRIMINATE RECOGNITION WOULD MEAN THE DIMINISHMENT OF THE SIGNIFICANCE OF FEDERAL RECOGNITION, MAKING FEDERAL RECOGNITION VULNERABLE TO TERMINATION (A REALISTIC HAZARD UNDER THE PRESENT ADMINISTRATION). AND THEY HAVE EXPRESSED CONCERN THAT THE FEDERAL GOVERNMENT IS NOT LIKELY TO EXPAND THE FEDERAL BUDGET IN PROPORTION TO THE EXPANSION OF FEDERAL RECOGNITION, WHICH WOULD MEAN SLICING THE "FEDERAL FUNDING PIE" TOO THIN AMONG BENEFICIARY OR ENTITLEMENT GROUPS.

CRITICS OF NCAI'S CAUTION IN THIS MATTER ATTEMPT TO PAINT THE LEADERS OF FEDERALLY-RECOGNIZED TRIBES AS PAWNS OF THE FEDERAL ESTABLISHMENT WHO REFUSE TO SHARE ABUNDANT FEDERAL RESOURCES WITH LESS FORTUNATE INDIAN BROTHERS.

THIS IS SIMPLY NOT TRUE. NCAI HAS CONSISTENTLY AND ACTIVELY SUPPORTED WHAT WE FELT WERE GENUINE INDIAN TRIBES TO ACHIEVE THEIR RIGHTFUL PLACE ON THE ROLLS OF FEDERAL RECOGNITION. IN OUR PRIMARY VOTING MEMBERSHIP -- TRIBAL MEMBERSHIP -- SOME TWENTY NONFEDERALLY-RECOGNIZED TRIBES ARE INCLUDED.

NOR DO WE APOLOGIZE FOR OUR CAUTION AND OUR VIGILANCE IN THIS MATTER. WE INSIST ON THE SAFEGUARDS TO PROTECT OUR STATUS AS INDIAN TRIBES AND OUR SOVEREIGN RIGHTS AS OUR LEADERS HAVE PROTECTED THEM FOR YEARS AT GREAT COST TO OUR TRIBES.

AND OUR CONCERNS REGARDING THE FEDERAL INDIAN BUDGET ARE VALID. THE INFAMOUS LITANY OF WOES REFLECTS THE FEDERALLY-RECOGNIZED TRIBES' PLIGHT: THE HIGHEST INFANT MORTALITY RATE, THE LOWEST LIFE EXPECTANCY, THE HIGHEST UNEMPLOYMENT RATE, THE LOWEST PER CAPITA INCOME, ETC. THAT DOES NOT REFLECT

ANY BOTTOMLESS WELL OF FEDERAL RESOURCES THAT WE SELFISHLY REFUSE TO SHARE.

OUR CONSTANT CONCERN HAS BEEN THAT FEDERAL RECOGNITION MUST BE EXTENDED TO TRIBES IN A FAIR AND CONSISTENT WAY WHICH WILL PROTECT AND PRESERVE THE FULL RIGHTS OF ALL TRIBES, AND THAT THE EXTENSION OF RECOGNITION MUST BE ACCOMPANIED BY A REAFFIRMATION OF TRIBAL RIGHTS AND INCREASES IN APPROPRIATION LEVELS TO MATCH INCREASING LEVELS OF SERVICES TO TRIBES.

ON MARCH 28-30, 1978, THE NATIONAL CONGRESS OF AMERICAN INDIANS SPONSORED A NATIONAL CONFERENCE ON INDIAN RECOGNITION, WHICH WAS GRACIOUSLY HOSTED BY THE UNITED SOUTHEASTERN TRIBES IN NASHVILLE, TENNESSEE. THAT CONFERENCE WAS DESIGNED TO BRING TOGETHER LEADERSHIP OF FEDERALLY-RECOGNIZED TRIBES AND OF NONFEDERALLY-RECOGNIZED TRIBES FOR COMMUNICATION AND UNDERSTANDING, AND FOR THE MEMBERSHIP OF NCAI'S EXECUTIVE COUNCIL TO ADOPT A POSITION STATEMENT THAT WOULD BE ACCEPTIBLE TO THE RECOGNIZED AND NON-RECOGNIZED TRIBES.

IN THAT MEETING, I BELIEVE THAT WE ACCOMPLISHED MORE THAN THIS LEGISLATION OR THE INTERIOR DEPARTMENT'S PROPOSED REGULATIONS COULD EVER HOPE TO. IN THAT CONFERENCE, WE BEGAN THE PROCESS OF UNDERSTANDING EACH OTHER, AND WE ARRIVED AT APOSITION PAPER THAT MET WITH THE APPROVAL OF BOTH RECOGNIZED AND NON-RECOGNIZED TRIBES. THAT POSITION STATEMENT, ENCOMPASSING TWELVE PRINCIPLES TO GUIDE THE DEVELOPMENT OF THE UNITED STATES' POLICY TOWARD RECOGNITION, IS ATTACHED HERETO.

THE QUESTION IS, "HOW DO YOU DETERMINE WHETHER A GROUP IS AN INDIAN TRIBE?" THE NCAI HAS ITS OWN METHODS FOR DETERMINING TRIBAL CREDENTIALS ON A CASE-BY-CASE BASIS. WE DON'T NEED THE FEDERAL GOVERNMENT TO TELL US. THE SENATE BILL HAS A CLEAR AND CONSISTENT SET OF STANDARDS TO HELP THE GOVERNMENT DETERMINE WHAT IS AN INDIAN TRIBE FOR PURPOSES OF FEDERAL RECOGNITION. BUT WE ARE NOT SATISFIED THAT THESE STANDARDS CAN PROVIDE THE

NECESSARY SAFEGUARDS TO PROTECT TRIBAL SOVEREIGNTY AND STATUS. FOR THIS REASON, THE NATIONAL CONGRESS OF AMERICAN INDIANS HAS VOTED TO OPPOSE S.2375. THE RESOLUTION READS AS FOLLOWS:

THE NATIONAL CONGRESS OF AMERICAN INDIANS OPPOSES S.2375 UNLESS TRIBES ARE PROPERLY APPROACHED AND CONSULTED.

IT IS MY PLEASURE TO SIT ON THIS PANEL WITH THE AUTHOR OF THE ABOVE RESOLUTION, MR. LEONARD TOMASKIN. HE MAY WISH TO ADDRESS THAT FURTHER.

MR.CHAIRMAN, THAT CONCLUDES THE STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS. THANK YOU.

Q - If satisfied of Indians, would you withdraw?
What would they do?
A - Along lines of 12 points.
Q - willing to work if Congress to develop Indians
A - Yes

Q to Leonard -
Why not put burden on US?
A - Let tribes should say this and they should plan ahead - will of people
Leonard: concerned re, about IHS doctors
Why should tax Pi

Market - concerned about health, welfare & opportunities of all tribes

THE NATIONAL CONGRESS OF AMERICAN INDIANS DECLARATION OF PRINCIPLES ON TRIBAL RECOGNITION BY THE U. S. GOVERNMENT

1. The United States Government has a permanent obligation to protect, preserve and defend the inherent sovereign rights of all Indian Tribes choosing to engage in a relationship with the United States.

2. The United States has on an arbitrary basis failed to fulfill its obligations to all Tribes, leaving many Tribes weak and vulnerable.

3. The National Congress of American Indians, an organization which represents the common interests of all Tribes, demands that the United States fulfill its obligation and acknowledge the existence of these Tribes and protect their rights to the fullest extent of the law.

4. The failure of the United States to establish and maintain consistant policies for extending political recognition to all Indian Tribes, has allowed State and local Governments, and private interests, to infringe upon the sovereign rights and powers of such un-recognized Tribes over land, people, and resources.

5. The level of federal support and assistance should not be dependent upon the arbitrary aspects of budgetary considerations, but should be based on the protections and services to which the tribes are entitled.

6. As additional tribes are confirmed in their status, the federal government must appropriate funds above and beyond the operating levels presently received by currently-recognized tribes. Tribes recognized pursuant to any criteria must have their needs met out of additional appropriations that will be sought by the responsible federal agencies.

7. There must be a valid and consistent set of criteria applied to every group which petitions for recognition. The criteria must be based on ethnoligical, historical, legal and political evidence. It is the inherent right and responsibility of each and every existing tribe to determine its membership through its own defined criteria and no already federally recognized tribe should be required to accept newly recognized groups into tribal membership without the consent and approval of the existing tribe.

8. Only those tribes or groups who satisfy criteria to be established pursuant to principle #7 may be recognized.

9. Every determination that a group is not an Indian tribe must be clearly justified on the group's failure to meet the legitimate criteria.

10. Recognition must carry with it all the force and impact which recognition by treaties, legislation, or administrative actions has carried.

11. Recognition shall not negate or affect in any way the previous recognition granted other tribes by treaties, legislation, or administrative action nor affect or dilute tribal assets or existing reservations of any already federally recognized Indian tribe without the consent and approval of the already federally recognized tribe.

12. Upon recognition of a tribe's status, the United States should inform the tribe of the rights, benefits, and protection afforded by Federal Indian law. It shall be the responsibility of Congress to appropriate at the request of the tribes, additional funds to related federal agencies to fulfill these trust obligations.

Chairman ABOUREZK. Do you want to make a statement, Mr. Tomaskin?

STATEMENT OF LEONARD TOMASKIN, CHAIRMAN, GENERAL COUNCIL, YAKIMA INDIAN NATION

Mr. TOMASKIN. Mr. Chairman, it is a pleasure to come before you on this nice day. My name is Leonard Tomaskin. I am the chairman of our general council, Yakima Indian Nation, State of Washington.

This presentation was made on March 23, 1978. It is in regard to Senate bill 2375. I wish that I could present this so that you could look at it like a picture. I will probably ad lib on some of this.

Although administrative procedures and guidelines regarding the acknowledgment of certain Indian tribes may be necessary, impact of the procedures and guidelines in S. 2375 causes the Yakima Nation great concern.

To begin with my people gave the supreme sacrifice. My ancestors who signed the treaty were hung and they were shot. They were put on the firing line after the treaty was signed. I think this is one of the reasons it gives the Yakima Nation great concern. We gave the supreme sacrifice to retain what we have today and what little we have.

I wish that Mark Hatfield would have been here in regard to the questions that he had asked.

A very brief history and description of the Yakima Nation will now be presented. The confederated tribes and the bands of the Yakima Indian Nation is a sovereign Indian nation and tribes established by the treaty with the United States (12 Stat. 951).

The Yakima Indian Nation ceded to the United States approximately 10 million acres of land and reserved for their own exclusive use and benefit over or approximately 1 million acres of land. At present, the Yakima Indian Reservation has approximately 1,387,505 acres of land within its exterior boundaries, of which all but approximately 270,895 acres are held in trust or restricted status by the United States of America as trustee for the Yakima Indian Nation, its members, and other Indians.

The Yakima Indian Nation exercises its sovereign powers and conducts its business through a governing body duly recognized by the Secretary of the Interior. The Yakima Indian Nation has always been treated as a tribe and/or band by other Indian tribes. The Yakima Indian Nation has retained its traditions, culture, and language since time immemorial.

This very brief history and description describes our status and relationship with the United States. Naturally, this makes us very concerned about protecting and preserving this unique status and relationship with the United States.

In reviewing Senate bill 2375, there are some very serious problems that we think should be discussed.

One, it would be our suggestion that we consider the question of who has the burden of proving that they are a tribe. Under the bill, it provides that the Secretary of the Interior has the burden of proving that they are not a tribe. We do not believe that this burden should be on the Secretary of the Interior.

Two, the bill provides that an Indian group can resubmit a petition at any time in the future. One of the findings in section 2 is that the criteria will afford petitioning tribal groups an opportunity to resolve once and for all the issue of whether they are entitled to have their existence acknowledged. The provision allowing groups to resubmit petitions at any time appears to be somewhat contrary to the findings in section 2. We support resubmitting petitions, but only where new or additional evidence show that the group could not present in their previous petition a basis for resubmitting their petition.

Three, there are the provisions regarding the preparation of a tribal roll. Although we will not take a position contrary to tribes already having a roll to determine who their members are, we suggest that there should be a provision that every new tribe must have a tribal roll based upon at least one-quarter Indian blood. This would be in line with the position taken by the National Tribal Chairman's Association.

Also, we think it should be a good provision to provide in the bill that, where a tribe is petitioning for recognition, that they should specify the financial burden that this will be placing on the United States so that Congress and other funding authorities can plan for the increased budget without diminishing services to previously recognized tribes.

I note that on page 2 the bill provides that Congress shall not diminish services by the recognition of a new group. But, unless they have notice of what the cost will be, they will not be able to make preparation, budgets, and appropriations which are prepared prior to the recognition.

Last, we will consider the definition factors in section 5. In the past, the following factors have been used under the Indian Reorganization Act of 1934:

(1) That the group has had treaty relations with the United States;

(2) That the group has been designated a tribe by act of Congress or Executive order;

(3) That the group has been treated as having collective reports on tribal lands or funds, even though not expressly designated a tribe;

(4) That the group has been treated as a tribe or a band by other Indian tribes; and

(5) That the group has exercised political authority over its members, through a tribal council or other governmental forms.

Regarding U.S. Department of the Interior, Federal Indian law, 1958, pages 460 and 461: The definitional factors on section 5 are broad and the differences between the above-quoted factors and the definitional factors in section 5 are too great for us to support as section 5 is written. Therefore, we suggest that section 5 be rewritten.

Unless this committee considers our suggestion, our concern about S. 2375 will remain—that this bill should not be enacted.

Thank you for allowing me to come before you.

Chairman ABOUREZK. Thank you very much. Your prepared statement will be made a part of the record.

[Mr. Tomaskin's prepared statement follows:]

LEONARD TOMASKIN, CHAIRMAN, GENERAL COUNCIL
YAKIMA INDIAN NATION
MARCH 23, 1978

RE: S-2375

ALTHOUGH ADMINISTRATIVE PROCEDURES AND GUIDELINES REGARDING THE ACKNOWLEDGMENT OF CERTAIN INDIAN TRIBES MAY BE NECESSARY, IMPACT OF THE PROCEDURES AND GUIDELINES IN S-2375 CAUSES THE YAKIMA NATION GREAT CONCERN.

A VERY BRIEF HISTORY AND DISCRIPTION OF THE YAKIMA NATION WILL NOW BE PRESENTED. THE CONFEDERATED TRIBES AND THE BANDS OF THE YAKIMA INDIAN NATION IS A SOVEREIGN INDIAN NATION AND TRIBES ESTABLISHED BY THE TREATY WITH THE UNITED STATES 12 STAT. 951. THE YAKIMA INDIAN NATION CEDED TO THE UNITED STATES APPROXIMATELY 10,000,000 ACRES OF LAND AND RESERVED FOR THEIR OWN EXCLUSIVE USE AND BENEFIT OVER OR APPROXIMITELY 1,000,000 ACRES OF LAND. AT PRESENT, THE YAKIMA INDIAN RESERVATION HAS APPROXIMITELY 1,387,505 ACRES OF LAND WITHIN ITS EXTERIOR BOUNDRIES, OF WHICH ALL BUT APPROXIMITELY 270, 895 ACRES ARE HELD IN TRUST OR RESTRICTED STATUS BY THE UNITED STATES OF AMERICA AS TRUSTEE FOR THE YAKIMA INDIAN NATION, ITS MEMBERS AND OTHER INDIANS.

THE YAKIMA INDIAN NATION EXERCISES IT'S SOVEREIGN POWERS AND CONDUCTS IT'S BUSINESS THROUGH A GOVERNING BODY DULY RECOGNIZED BY THE SECRETARY OF THE INTERIOR. THE YAKIMA INDIAN NATION HAS ALWAYS BEEN TREATED AS A TRIBE AND OR BAND BY OTHER INDIAN TRIBES. THE YAKIMA INDIAN NATION HAS RETAINED IT'S TRADITIONS, CULTURE AND LANGUAGE SINCE TIME IMMEMORIAL.

THIS VERY BRIEF HISTORY AND DISCRIPTION DESCRIBES OUR STATUS AND RELATIONSHIP WITH THE UNITED STATES. NATURALLY, WHICH MAKES US VERY CONCERNED ABOUT PROTECTING AND PRESERVING THIS UNIQUE STATUS AND RELATIONSHIP WITH THE UNITED STATES.

IN REVIEWING SENATE BILL 2375, THERE ARE SOME VERY SERIOUS PROBLEMS THAT WE THINK SHOULD BE DISCUSSED.

1. IT WOULD BE OUR SUGGESTION THAT WE CONSIDER THE QUESTION OF WHO HAS THE BURDEN OF PROVING THAT THEY ARE A TRIBE. UNDER THE BILL, IT PROVIDES THAT THE SECRETARY OF INTERIOR HAS THE BURDEN OF PROVING THAT THEY ARE NOT A TRIBE. WE DO NOT BELIEVE THAT THIS BURDEN SHOULD BE ON THE SECRETARY OF INTERIOR.

SECRETARY OF INTERIOR

2. THE BILL PROVIDES THAT AN INDIAN GROUP CAN RESUBMIT A PETITION AT ANY TIME IN THE FUTURE. ONE OF THE FINDINGS IN SEC.2 IS THAT THE CRITERIA WILL AFFORD PETITIONING TRIBAL GROUPS AN OPPORTUNITY TO RESOLVE ONCE AND FOR ALL THE ISSUE OF WHETHER THEY ARE ENTITLED TO HAVE THEIR EXISTANCE ACKNOWLEDGED. THE PROVISION ALLOWING GROUPS TO RESUBMIT PETITIONS AT ANY TIME APPEARS TO BE SOMEWHAT CONTRARY TO THE FINDINGS IN SEC. 2. WE SUPPORT RESUBMITTING PETITIONS, BUT ONLY WHERE NEW OR ADDITIONAL EVIDENCE SHOW THAT THE GROUP COULD NOT PRESENT IN THEIR PREVIOUS PETITION A BASES FOR RESUBMITTING THEIR PETITION.

3. THERE THE PROVISIONS REGARDING THE PREPARATION OF A TRIBAL ROLL. ALTHOUGH WE WILL NOT TAKE A POSITION CONTRARY TO TRIBES ALREADY HAVING A ROLL TO DETERMINE WHO THEIR MEMBERS ARE, WE SUGGEST THAT THERE SHOULD BE A PROVISION THAT EVERY NEW TRIBE MUST HAVE A TRIBAL ROLL BASED UPON AT LEAST ONE-QUARTER INDIAN BLOOD. THIS WOULD BE IN LINE WITH THE POSITION TAKEN BY THE NATIONAL TRIBAL CHAIRMAN'S ASSOCIATION. ALSO, WE THINK IT SHOULD BE A GOOD PROVISION TO PROVIDE IN THE BILL THAT WHERE A TRIBE IS PETITIONING FOR RECOGNITION, THAT THEY SHOULD SPECIFY THE FINANCIAL BURDEN THAT THIS WILL BE PLACING ON THE UNITED STATES SO THAT CONGRESS AND OTHER FUNDING AUTHORITIES CAN PLAN FOR THE INCREASED BUDGET WITHOUT DIMINISHING SERVICES TO PREVIOUSLY REORGANIZED TRIBES. I NOTE THAT ON PAGE 2 THE BILL PROVIDES THAT CONGRESS SHALL NOT DIMINISH SERVICES BY THE RECOGNITION OF A NEW GROUP, BUT UNLESS THEY HAVE NOTICE OF WHAT THE COST WILL BE, THEY WILL NOT BE ABLE TO MAKE PREPARATION, BUDGETS AND APPROPRIATIONS WHICH ARE PREPARED PRIOR TO THE RECOGNITION. LAST, WE WILL CONSIDER THE DEFINITIONAL FACTORS IN SECTION 5. IN THE PAST THE FOLLOWING FACTORS HAVE BEEN USED UNDER THE INDIAN REORGANIZATION ACT OF 1934:

1. THAT THE GROUP HAS HAD TREATY RELATIONS WITH THE UNITED STATES.
2. THAT THE GROUP HAS BEEN DESIGNATED A TRIBE BY ACT OF CONGRESS OR EXECUTIVE ORDER.
3. THAT THE GROUP HAS BEEN TREATED AS HAVING COLLECTIVE REPORTS ON TRIBAL LANDS OR FUNDS, EVEN THOUGH NOT EXPRESSLY DESIGNATED A TRIBE.

4. THAT THE GROUP HAS BEEN TREATED AS A TRIBE OR A BAND BY OTHER INDIAN TRIBES.

5. THAT THE GROUP HAS EXERCIZED POLITICAL AUTHORITY OVER IT'S MEMBERS, THROUGH A TRIBAL COUNCIL OR OTHER GOVERNMENTAL FORMS.

UNITES STATES DEPARTMENT OF THE INTERIOR, FEDERAL INDIAN LAW(1958), P. 460-461. THE DIFINITIONAL FACTORS ON SECTION 5 ARE BROAD AND THE DIFFERANCES BETWEEN THE ABOVE QUOTED FACTORS AND THE DIFINITIONAL FACTORS IN SECTION 5 IS TOO GREAT FOR US TO SUPPORT AS SECTION 5 IS WRITTEN. THEREFORE, WE SUGGEST THAT SECTION 5 BE REWRITTEN.

UNLESS THIS COMMITTEE CONSIDERS OUR SUGGESTION, OUR CONCERN ABOUT S. 2375 WILL REMAIN, THAT THIS BILL SHOULD NOT BE ENACTED.

THANK YOU FOR ALLOWING ME TO COME BEFOR YOU.

Chairman ABOUREZK. Ms. Murdock, on your NCAI position, you say:

> The Senate bill has a clear and consistent set of standards to help the Government determine what is an Indian tribe for purposes of Federal recognition. But we are not satisfied that these standards can provide the necessary safeguards to protect tribal sovereignty and status. For this reason, NCAI has voted to oppose S. 2375.

My question is this: If there were standards that would satisfy you, I assume from this statement you made that NCAI would support S. 2375 if the standards were adequate to meet what your concerns are. Is that correct?

Ms. MURDOCK. I believe that they would. In the 12 points that were adopted by the National Congress of American Indians, this is what we tried to set forth. But I also realize that one of the concerns that they have was the national congress deals with these Indian tribes on an individual-to-individual basis rather than a blanket situation.

So, I think, in working with the 12 principles—and this was by nonrecognized and federally recognized tribes that developed these—they were acceptable to all parties.

Chairman ABOUREZK. I understand you deal with it on a case-by-case basis. But I am not sure that there is either the desire or the ability on the part of the Government to do that. And that is why this legislation has been offered.

If we are going to set standards that would satisfy NCAI: What would those standards be?

Ms. MURDOCK. I think if they could be developed around the 12 points that were set out by the National Congress of American Indians.

I believe also it was the feeling of the National Congress of American Indians that this was a starting point and that we were just gearing up to addressing this issue.

Chairman ABOUREZK. Would you and your staff be willing to work with the Indian Committee staff in developing standards that might satisfy the Indian tribes?

Ms. MURDOCK. I think we would be happy to do that.

Chairman ABOUREZK. We would appreciate that. We have done that with your group before, as you know; and we value your advice very highly.

Mr. Tomaskin, when you say that you do not think that the burden ought to be on the U.S. Government to prove that a group is not a tribe: Why do you say that? What is your reason for saying that?

Mr. TOMASKIN. Senator, I was one of those that helped develop these 12 principles. I believe at that time that I said I do not think we need anybody to tell us who our brothers and our sisters are. We should be the ones to say.

Chairman ABOUREZK. You say "we." Who are "we"?

Mr. TOMASKIN. The presently recognized tribes. I believe I say that in my statement.

Chairman ABOUREZK. I know, but if that is the case, if you just say the presently recognized tribes, you understand the political problem with that?

Mr. TOMASKIN. Yes.

Chairman ABOUREZK. A great many of the recognized tribes will say, "Well, we don't want to cut up the Federal pie with any more tribes coming in."

Now, some people view that as being somewhat unfair and protective of what few Federal resources are available. So, when you say "we," what about the Indians who really consider themselves to be a tribe and they have been considered by you—the Indians, as you say—not to be a tribe? What do you do in that case? If there is a conflict, who should referee that fight?

Mr. TOMASKIN. I believe I addressed that when I presented the history of our tribe. I wanted you to really listen to that, especially when you get toward the end of my explaining the brief history. I believe we work together as Indian tribes, especially in the West, when we are invited to some traditional doings.

I know there are some unrecognized tribes along the west coast, but they do exercise their traditional and cultural ceremonies; and we are invited and we go. So, we know that these people are Indian people because they exercise their traditions and their cultures. These are the kind of people that the Yakimas would say that we do not recognize. We know that they are Indian people, but they are not recognized as a tribe.

Chairman ABOUREZK. What group seeking recognition now as a tribe do you think is not a tribe? Can you name the group?

Mr. TOMASKIN. Well, I won't want to say.

Chairman ABOUREZK. Nobody will take it personally.

Mr. TOMASKIN. The only thing I would say is that whoever is looking for recognition should be able to talk their own language or sing their own Indian song or pray in their own Indian way.

Chairman ABOUREZK. Those are the only standards that you are setting?

Mr. TOMASKIN. That is my culture.

Chairman ABOUREZK. Let me ask you this. Is anybody from the Bureau or the Interior Department talking to you about this idea of who the burden should be on?

Mr. TOMASKIN. No; this was one of the recommendations I think that I made when the resolution was presented by me. My recommendation was to oppose this since the Bureau of Indian Affairs and Secretary of Interior came up with this criteria. I believe our idea at that time was maybe we should work with the Secretary of Interior and Bureau of Indian Affairs to develop this recognition system rather than having another bill introduced and maybe diminish some of the services as already expressed.

I think, if we worked with the Department of the Interior as Indian people, I think we could develop something that would be worthwhile rather than going into another bill.

Mr. PARKER. In the chairman's absence, I have just a couple more questions.

The principles, which I know you were involved in developing and which the NCAI sponsored the meeting to establish, state in principle No. 6 that additional tribes are confirmed in their status to the Federal Government should appropriate funds above and beyond the operating levels presently received by currently recognized tribes.

As I understand the Department's testimony, that has been the practice over the past several years. Several tribes have been recognized through court decisions or other processes. In each case, as I understand it, the services which were provided to these newly recognized groups were provided pursuant to additional appropriations. That certainly is the intent of S. 2375.

Is that a practice and procedure which you feel protects the concern that you have expressed in your testimony?

Mr. TOMASKIN. There is an example, I believe, that can be pointed out about what you are saying.

We have an Indian school in the West. A newly recognized tribe is there. Presently, I guess they will be using our Indian school health facilities. That will probably use up some of the medicine for some of the schoolchildren enrolled there. They do not have the proper provisions to care for that extra load—the newly recognized tribe. If they recognize the other little tribes that were arbitrarily terminated, I believe this would diminish the services that we presently have in the State of Oregon.

Mr. PARKER. I understand in that particular case that the Indian Health Service, in its budget request for this fiscal year, did request an additional appropriation to meet the health needs of that tribe. The appropriation request was turned down at high levels in HEW.

Ms. Murdock, the NCAI resolution briefly states that the NCAI is opposed to S. 2375 unless tribes are properly approached and consulted. Would you have any other elaboration of what the intent is there—in addition to what you stated in your testimony?

Ms. MURDOCK. Other than I believe that the effort made by the National Congress of American Indians is the only one that I am aware of with regard to having tribes review and read and try to make comments on this regulation.

I do not know what would have happened if that conference had not been prompted by the National Congress of American Indians. At that conference, I believe, we had 90 tribes there. But I feel that at that time also that all tribes should be consulted with. At that time I also felt it was a very low-key meeting. I expected a lot more activity and inquiries and whatnot. I feel that people were just kind of waiting to see how we were going to proceed and what criteria were going to be adopted and what was going to be set up and how those people felt.

I think they still probably need additional time to make the kind of considerations that they should with regard to any kind or type of legislation or regulations. I do not know who that is going to be prompted by.

Mr. PARKER. Your concern is directed both at the regulations as well as S. 2375 in terms of this concern for further consultation and communication with the tribes. Is that right?

Ms. MURDOCK. Yes. And I think this extends to the nonrecognized as well.

Mr. PARKER. In other words, there should be consultation with all.

Ms. MURDOCK. Yes; I believe so. I believe all these people should be involved. I think that many of them—as I am sure will come out at this hearing—have their opinions with regard to both.

Mr. PARKER. Thank you.

Mr. TOMASKIN. In regard to this funding, I think it would be a good provision to provide in the bill that, where a tribe is petitioning for recognition, they should specify the financial burden that this will be placing on the United States so that Congress and other funding authorities can plan for the increased budget without diminishing services to the previously recognized tribes. We have to work together with this if this is what we are going to do. We have to plan ahead.

If we know we are going to have 42 new tribes, I think Congress and the Senate should plan ahead for that in the area of funding.

Mr. PARKER. Thank you.

Chairman ABOUREZK. We want to thank each of you for your appearance and your testimony.

Before I call the next panel, I want to introduce some distinguished guests that we have in the hearing room today. First of all, we have the former Commissioner of Indian Affairs, former American Indian Policy Review Commissioner, Louis Bruce.

[Applause.]

Chairman ABOUREZK. Also, some people just came into the room who are some of my constituents from South Dakota. There is the very distinguished Holy Man from the Sioux Nation and his interpreter, Mathew King. Would you stand up please.

[Applause.]

Chairman ABOUREZK. I would like to call the next panel: Rudy Ryser, executive director, Small Tribes of Western Washington; Joan Marshall, chairperson, Small Tribes of Western Washington; Eric Thomas, Tribal Coordinator, Narragansett Regional Council, Charleston, R.I.; George Tomer, tribal planner, Penobscot Regional Council; Adolph Dial, Lumbee; Dexter Brooks, attorney; and Raymond Gibbs of the Tuscarora.

I would like to ask the witnesses to kindly hand in the statements to be printed in the record and please summarize in your own words how you feel about this legislation. We would appreciate it very much.

STATEMENT OF JOAN MARSHALL, CHAIRWOMAN, STEILACOOM TRIBE, AND CHAIRWOMAN, SMALL TRIBES ORGANIZATION OF WESTERN WASHINGTON

Ms. MARSHALL. Thank you, Mr. Chairman, for this opportunity to present the views of the Small Tribes Organization of Western Washington regarding Senate bill 2375, which will establish administrative procedures for the United States to extend its protection to certain tribes and their governments. My remarks will be short as will those of Rudy Ryser, who will follow me. Our remarks are supplemented by written testimony which is more lengthy and detailed.

Chairman Abourezk, I want to thank you and compliment you for your courage and honesty, both as chairman of this committee and sponsor of Senate bill 2375. Unlike any Senator before you, you have held strongly to basic principles of fairness and justice in Indian affairs.

This fairness and justice is reflected in Senate bill 2375. S. 2375 speaks, as it should, to the most fundamental features of the relationship between the U.S. Government and tribal governments. The basic relationship is expressed as "the establishment of government-to-government realtionship(s) with Indian tribes." Both the United States and Indian tribes will benefit from the application of this basic principle. Implied in this principle is a statement of mutual respect and a broad commitment of governments to responsible and cooperative actions.

All tribes and their governments would have advanced and become stronger had the government-to-government principle been well

understood years ago. Indeed it is probable that the many tribal communities and societies that have been destroyed by U.S. actions in the past would today survive if government-to-government relations had been carried out.

Mr. Chairman, as you may know, the tribal governments in the Pacific Northwest have usually led the United States to adopt many positions which support tribal rights. The Northwest tribes have tenaciously held to concepts and principles for generations while trying to convince the U.S. Government to adopt new laws which would increase the chances of tribal survival.

If the chairman of this committee were to review the countless committee hearings, the chairman would discover it was a Snohomish Indian from the Pacific Northwest, Thomas Bishop, who was among the first to call attention to those tribes whose rights were unprotected. In 1919 Mr. Bishop called upon the Congress and the executive branch to fulfill U.S. commitments to various tribes whose lands had been confiscated and whose rights had been ignored.

Some of the tribal societies about which Mr. Bishop was alarmed were destroyed, but others were able to survive even without the promised benevolence of the United States. These tribes have survived even after three generations of studied attempts at their destruction.

Why, Mr. Chairman, do you think these tribes survive today? I will supply you with part of an answer: The people continue to believe in the institutions and ways of tribalism. To survive as a people the tribe as an entity was and is now essential. To survive in the future the tribe must adapt and continue.

Tribal communities which have not been protected by the United States do want the opportunity to establish a relationship with the U.S. Government. Some suggest this is so because tribal members want services from the BIA. Mr. Chairman, I would state for you now that the paramount reason is not services, but rather that reason is to reaffirm the commitments and agreements made between our tribal leaders and the U.S. Government officials. In other words, we want the United States to live up to its commitments that in exchange for our lands we will have reserved territory and continuous protection from encroachments by outsiders.

That is a fairly simple idea. It is this simple idea that has all along sustained generations of tribal people. It is this simple idea that can insure the future of tribal societies.

Chairman ABOUREZK. Thank you.

Next we will hear from Mr. Ryser.

Without objection, we will insert the written material furnished by STOWW.

[The material follows:]

SUMMARY REMARKS REGARDING SENATE BILL 2375 BY JOAN MARSHALL, CHAIRWOMAN OF THE STEILACOOM TRIBE AND CHAIRWOMAN OF THE SMALL TRIBES ORGANIZATION OF WESTERN WASHINGTON (STOWW INC.) WITH RUDOLPH C. RYSER, EXECUTIVE DIRECTOR OF STOWW INC., BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS - APRIL 18, 1978.

Thank you Mr. Chairman for this opportunity to present the views of the Small Tribes Organization of Western Washington regarding Senate Bill 2375, which will establish administrative procedures for the United States to extend its protection to certain tribes and their governments. My remarks will be short as will those of Rudy Ryser, who will follow me. Our remarks are supplemented by written testimony which is more lengthy and detailed.

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All tribes and their governments would have advanced and become stronger had the government-to-government principle been well understood years ago. Indeed it is probable that the many tribal communities

and societies that have been destroyed by U.S. actions in the past would today survive if government-to-government relations had been carried out.

Mr. Chairman, as you may know, the tribal governments in the Pacific Northwest have usually led the United States to adopt many positions which support tribal rights. The Northwest tribes have tenaciously held to concepts and principles for generations while trying to convince the U.S. Government to adopt new laws which would increase the chances of tribal survival. If the Chairman of this Committee were to review the countless Committee hearings, the Chairman would discover it was a Snohomish Indian from the Pacific Northwest, Thomas Bishop, who was among the first to call attention to those tribes whose rights were unprotected. In 1919 Mr. Bishop called upon the Congress and the Executive Branch to fulfill U.S. commitments to various tribes whose lands had been confiscated and whose rights had been ignored.

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ernment. Some suggest this is so because tribal members want "services" from the B.I.A. Mr. Chairman, I would state for you now that the paramount reason is not services, but rather that reason is to reaffirm the commitments and agreements made between our tribal leaders and the U.S. Government officials. In other words, we want the U.S. to live up to its commitments that in exchange for our lands we will have reserved territory and continuous protection from encroachments by outsiders. That is a fairly simple idea. It is this simple idea that has all along sustained generations of tribal people. It is this simple idea that can insure the future of tribal societies.

NORTHWEST COMBINED DRAFT

PART 54—PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE.

Sec.

54.1 Definitions
54.2 Purpose
54.3 Scope
54.4 Who may file
54.5 Where to file
54.6 Duties of the Department
54.7 Form and content of petition
54.8 Notice and receipt of petition
54.9 Processing the petition
54.10 Preliminary findings and petitioner's rebuttal
54.11 Final action by the Department of Interior

54.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Assistant Secretary" means the Assistant Secretary—Indian Affairs, or his authorized representative.

(c) "Department" means the Department of the Interior.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Indian Tribe" also referred to herein as "tribe" means any Indian group within the United States that the Secretary of Interior acknowledges to be an Indian tribe.

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(f) "Historic Association of Groups" means any long-standing, commonly known, historical contact of two or more Indian groups associated together for political, social, or economic purposes, and for their common good, to the extent that they are viewed today as a single entity.

(g) Petitioner" also referred herein as "petitioning group" means any group which has submitted a petition to the Secretary requesting acknowledgement that it is an Indian tribe.

(h) "Autonomous" means having a separate tribal council, structure or other organizational mechanism which the group has used as its own means of making group decisions such as the determination of its membership. The Indian tribe's structure must be understood in the context of the Indian culture and social organization of that group, and the fact that many already acknowledged tribes possess only informal leadership structures and governmental institutions.

(i) "Member" of an Indian group not currently acknowledged to be an Indian tribe means an individual who is recognized by the group as meeting its membership criteria and consents to being listed as a member of the group.

(j) "Member" of an Indian tribe is an individual who is either enrolled in that tribe as a member or is recognized collectively by those members comprising the tribe as being a member.

54.2 Purpose.

The purpose of this part is to establish a Departmental procedure and policy for acknowledging that certain American Indian groups exist as Indian Tribes. Such acknowledgement of tribal existence by the Department shall be deemed to be acknowledgement that the Indian Tribe in question exists as a Indian Tribe, eligible for all protection, services, and benefits from the federal government available to Indian tribes to the fullest extent allowed under law. Such acknowledgement shall also mean that the Tribe is entitled to all immunities and privileges available to other federally recognized Indian tribes.

54.3 Scope.

This part is intended to cover only those American Indian Groups which may have the attributes of Indian Tribes, but which have not as yet been fully acknowledged as such by the Department.

This part is not intended to apply to associations, organizations, corporations, or groups of any character composed of individuals descendent from many groups or tribes unless there has been a historic association of the groups such that they have functioned and been recognized as a single entity for a protracted period of time. Nor is this part intended to apply to splinter groups, political factions, communities or groups of any character which separated from the main body of a tribe

currently recognized as being an Indian tribe by the Bureau, unless it can be clearly established that the group has functioned historically and for a protracted period of time as an autonomous entity.

54.4 Who May File.

Any Indian group in the United States which believes it should be acknowledged as an Indian tribe, and can satisfy the criteria in Section 54.7, may submit a petition requesting that the Secretary acknowledge the group's existence as an Indian Tribe.

54.5 Where to File.

A petition requesting the acknowledgement that an Indian group exists as an Indian tribe shall be filed with the Assistant Secretary—Indian Affairs, Department of the Interior, 18th & 'C' Streets N.W., Washington, D.C. 20245.

54.6 Duties of the Department

In addition to processing petitions submitted to the Department pursuant to these regulations by any Indian group in the United States, the Department shall also have the responsibility to contact, within a twelve-month period following the enactment of these regulations, all known Indian tribal groups in the

United States whose existence has not been previously acknowledged by the Department. The tribal groups that the Department shall have the responsibility to contact shall include but not be limited to those listed in Chapter 11 of the American Indian Policy Review Commission Report. The Department shall inform all such groups of their right to petition for an acknowledgement of tribal existence by the federal government.

The Department shall also have the responsibility to provide, to the fullest extent possible, technical assistance to the petitioning group in investigating the group's historical background and Indian identity.

54.7 Form & Content of the Petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge tribal existence.

(a) Within sixty (60) days after the publication of final regulations, the Secretary will have available suggested guidelines for the format of the petition, including general suggestions and guidelines on where and how to research for required information and examples of acceptable documents. The Department's examples of petition formats and documents shall not preclude the use of any other format or acceptable document.

(b) The petition shall include at least the following:

1. A statement of facts establishing that the group has been identified as "Indian, Native American, or aboriginal"

for a protracted period of time. Such longstanding Indian identity may include identification as a division of, combination of, or confederation with other specific Indian tribes if such identification does not conflict with 54.7(b)(6). Evidence to be relied upon in determining the group's longstanding Indian identity shall include but not be limited to any of the following:

(i) Repeated identification by federal authorities;

(ii) Longstanding relationships with state governments based on identification of the group as Indian;

(iii) Repeated dealings with a county, parish, or other local government in a relationship based on the group's Indian identity;

(iv) Identification as Indian by records in courthouses, churches, or schools;

(v) Identification as Indian by anthropologists, historians, or other scholars;

(vi) Identification as Indian in newspapers and books;

(vii) Any other evidence deemed relevant by the Office of the Secretary.

3. A copy of the group's present governing document, or in the absence of a written document, a statement describing in full the membership criteria.

4. A list of all current members of the group and a copy of each available former list of members. The membership must consist of individuals who have established, using evidence acceptable to the Secretary, descendancy from a common tribal

origin which existed historically or tribal origins with a known historic relationship.

Evidence acceptable to the Secretary of tribal membership for this purpose includes but is not limited to:

(i) Membership rolls approved by the Secretary for the applicant tribe for purposes of distributing claims money, providing allotments, or other purposes;

(ii) State, Federal or other official records or evidence identifying present members or ancestors or present members as being Indian or a member of the petitioning tribe;

(iii) Church, school, and other similar enrollment records indicating the person as being a member of the petitioning tribe;

(iv) Newspaper or other similar evidence identifying the person as being a member of the petitioning tribe;

(v) Reputation in the community in which the person lives or reputation among tribal members as being an Indian and a member of the applicant tribe.

(vi) Any other record or evidence identifying the person as a member of the petitioning tribe.

5. The petitioning group is not, nor are its members, the subject of Congressional legislation which has expressly terminated the federal relationship between the applicant group and the United States.

6. The membership of the petitioning group is composed principally of persons who are not a splinter group or political faction from the main body of a tribe currently acknowledged as an Indian tribe by the Department, unless it can be established that the group has functioned for a protracted period of time as an autonomous entity.

(c) While they are not conclusive in determining modern tribal existence, any one of the following evidence shall create a presumption that the petitioning group is a tribe eligible for acknowledgement under this Part and all other evidence submitted shall be interpreted in a light favorable to the petitioner:

1. The petitioning group has been a party to a treaty, or agreement with the United States or is a successor in interest to an Indian tribe which treatied with or had an agreement ratified by Congress. For the purposes of this subpart, "successor in interest" to a treaty tribe means an Indian group whose members are principally descendants of the tribe in question, and which has evolved from the tribe and maintained a tribal structure.

2. The petitioning group has been a party to or is a successor in interest to an Indian tribe which was either a party to an unratified treaty or agreement with the United States or entered treaty negotiations with the United States.

3. The petitioning group was a party to or successor in interest to an Indian tribe which was a party to a treaty or agreement with a foreign nation or colonial government, the obligations and rights of such treaty being assumed by the United States or its individual states upon acquisition of land areas

wherein the petitioning group or its ancestors historically resided.

4. The petitioning group or its historic predecessor has been designated a tribe by an act of Congress, Executive Order, or denoted as a tribe in the legislative history of a bill which was subsequently enacted into law or has been acknowledged to be a tribe by a court of law.

5. The group has been considered by a state or by an agency of the federal government as an Indian entity having collective rights and land, water, funds or other assets, or having collective hunting and fishing rights, whether or not it was expressly designated a tribe.

6. The group is viewed as a distinct Indian group by other tribes or by the members of nearby communities. This factor may be evidenced by written statements from presently acknowledged tribes or neighboring communities stating that they have related to the unacknowledged tribal group for purposes connected with any intertribal activity.

54.8 Notice of Receipt of Petition.

Within ten (10) days after receiving a petition, the Assistant Secretary shall send an acknowledgement of receipt, in writing, to the petitioner, and shall have published in the Federal Register a notice of such receipt concluding the name, location, and mailing address of the petitioning group and other such information as will identify the group submitting the petition and the date

it was received. The notice shall also indicate where a copy of the petition may be examined.

54.9 Processing the Petition.

(a) Upon receipt of a petition, the Assistant Secretary shall cause a review to be conducted to determine whether the group is entitled to be acknowledged as an Indian tribe. The review shall include consideration of the petition and supporting evidence, and to the extent necessary, verification of the factual statements contained therein in the light of the above criteria.

(b) Within thirty (30) days after publication of notice of receipt of the petition, the Assistant Secretary shall notify the petitioning group of any obvious deficiencies, or significant omissions, that are apparent to reviewers upon initial review, and the reviewer may suggest a course of action in order that the petition conform to acceptable standards.

(c) Petitions, including those already filed, shall be considered on a first come, first serve basis determined by the date of original filing with the Department.

(d) The petitioner shall be notified when the petition comes under active consideration, and who is the primary Bureau staff member reviewing the petition, his back-up, and supervisor. Such notice shall also include the office address and telephone number of the primary staff member. During the review process, the petitioning group shall be provided copies of all additional documents, letters and other evidence obtained or received by the

Bureau's staff relevant to the group's petition.

(e) Those petitioning groups which already have petitions on file with the Bureau of Indian Affairs as of the enactment of these regulations shall have the right, at their option, to either amend their already filed petitions or have their petitions returned to them and file entirely new petitions. If a tribe withdraws its already filed petition, that petition shall not be considered as being a part of the official record of the tribe's case. Such tribes that have petitions already filed shall not lose their priority date by withdrawing and resubmitting their petitions later.

(f) The Assistant Secretary shall publish his proposed findings in the Federal Register within one (1) year after notifying the petitioner that active consideration of the petition has begun. The Secretary may extend that period up to an additional 180 days upon a showing that the petitioner has contributed to delay by failing to cure the significant omissions which the Secretary pointed out pursuant to Part 54.9(c).

(g) The Assistant Secretary shall acknowledge the existence of the petitioning group as an Indian tribe when it is determined that the group satisfies the criteria in Part 54.7 (b).

(h) The Assistant Secretary shall refuse to acknowledge that a petitioning group is an Indian tribe if the group fails to satisfy the criteria in Part 54.7(b).

(i) In the event the Assistant Secretary refuses to acknowledge the eligibility of a petitioning group, he shall within thirty (30) days after such refusal analyze and forward to the petitioner other

options (if any) under which application for services and other benefits may be made. Such options shall include legislation or possible membership in an already acknowledged Indian tribe.

54.10 Preliminary Findings and Petitioner's Rebuttal.

(a) The Assistant Secretary shall make a preliminary written report to the petitioner of proposed findings and conclusions. This report must outline the evidence for the decision.

(b) Upon receipt of this report, the petitioner shall have ninety (90) days to respond, including an opportunity to present oral argument to rebut the evidence relied upon.

54.11 Final Action by Department of Interior.

(a) The Assistant Secretary shall have thirty (30) days after petitioner's response to prepare a report of his findings and his final determination as to the petitioner's status. Such report shall be published in the Federal Register.

(b) The Assistant Secretary's final determination shall be subject to review by the Secretary, who may, by acting within thirty (30) days of such publication, supersede that determination. If the Secretary takes no action within such 30-day period, the Assistant Secretary's determination shall be final and shall be effective as of the date of the publication. The petitioner shall have the right to present its own response to the Secretary concerning the Assistant Secretary's final determination.

(c) If the matter is reviewed by the Secretary, his determination shall be final. Notice thereof shall be given to the petitioner and published in the Federal Register.

(d) Upon determination that the petitioner is an Indian tribe, the tribe shall be fully eligible for all services and benefits from the federal government available to other federally acknowledged tribes and entitled to all the privileges and immunities available to other federally acknowledged tribes by reason of their sovereign status.

(e) The Assistant Secretary shall take all steps necessary to increase appropriations for BIA programs and services so that assistance and services to existing tribes will not be diminished.

A

REPORT

ON

THE LANDLESS TRIBES OF WASHINGTON STATE

Submitted

TO THE

AMERICAN INDIAN POLICY REVIEW COMMISSION

TASK FORCE #10

ON

TERMINATED AND NON-FEDERALLY RECOGNIZED TRIBES

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JULY 26, 1976

F O R E W A R D

The Landless Indians of Washington State have done their part by providing input to Task Force #10 on Terminated and Non-Federally Recognized Tribes. The question now is whether the Congress will act on the recommendations of a Commission comprised of Indian people.

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I. INTRODUCTION

> "In drawing the attention of the government of the United States to the sufferings of some of its wards, the Indians, because of the non-fulfillment of the promises made to them by the government so long since, and which for some reason do not appear any nearer being met than they did 61 years ago, we do not speak in anger or even in ridicule, but in truth, in order to bring to notice an existing condition which, possibly, is not known or has been overlooked by the government, and for the purpose of righting a wrong which, if allowed to go on, will cause more untold hardships and death to the original native American people than it has already accomplished.
>
> In the almost compulsory trading of lands owned by the redmen for government's word to give them other lands and to see they lacked nothing in privileges and desires, and the non-fulfillment of any of these promises, causing misery and even death to many of the signers of the treaty, is pathetic to say the least.
>
> The contents of this pamphlet are true in every respect and will enlighten the officers of the government as to the condition of the most unhappy redmen." (Thomas G. Bishop, 1915).

Sixty-one years ago, Thomas G. Bishop wrote a book which attempted to make the United States government aware of its responsibility to the Indian People in Washington State. That book, entitled "SACRED PROMISES MADE 61 YEARS AGO", served as a useful tool for the United States Congress in developing Indian policy. It has now been 122 years since the majority of the Indian Nations in the Washington Territory entered into treaties with the United States, and yet, the United States has failed to carry out its trust obligations

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pledged by those treaties with at least eighteen of those Tribes.

The most frequently used method of disregarding the trust relationship with these Tribes has simply been to deny them a trust land base. The Bureau of Indian Affairs and the Department of the Interior have in the past stated that it was their policy not to provide protection or services to those Tribes which lacked a land base. As these Tribes began to question the "wisdom" of the Department's policy, they found, in fact, there was no written policy or regulation. The Department had chosen over the course of many years to simply ignore the needs of these Tribal groups; apparently hoping they would just go away. This method can only be viewed as an intentional attempt at political genocide.

To provide the Task Force with an example of how the Department has exercised this arbitrary and often secretive policy, the January 7, 1974 letter from La Follettee Butler, Acting Deputy Commissioner of Indian Affairs, to the Honorable Henry M. Jackson, Chairman of the Senate Committee on Insular Affairs, stated that:

> "Federal recognition is a subject which is extremely complex. Consistency of practice in giving "Federal Recognition" is difficult to discern, but we believe this apparent lack can be explained...First, it seems important to note the significance of the term Federal-recognition; recognition - not creation. It is our assumption that the term means that

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> there is an entity - something in being... the one remaining question from your and Mr. Sigo's letters is whether Federal recognition can be extended to a Tribe that does not have a land base. A land base is not a requirement for Federal recognition...the Associate Solicitor for Indian Affairs has reviewed this letter and agrees with its contents."

Shortly after this letter was transmitted, the Department of the Interior first denied its existence and then disavowed any responsibility for its contents.

On August 20, 1974, in a Memorandum from the Associate Solicitor for Indian Affairs, Mr. Reid P. Chambers, to then Solicitor Kent Frizzell covering the subject of the Secretary's authority to extend Federal recognition to Indian Tribes, he stated that:

> "Before the Secretary's authority can be determined, the nature of the action he is being requested to take must be established. The Secretary is being requested to recognize the Stillaguamish Tribe of Indians. The key to what the Secretary is doing is the term "recogniton." The Secretary is not creating a Tribe, nor is he vesting any special rights in anyone other than those which are already generally available to Indian Tribes. The Secretary is merely acknowledging the existence in fact of this group of Indians, based on the facts which are available to him and which he is considered to have a special expertise for evaluating...the Secretary has previously recognized and exercised the authority of the Executive Branch to extend recognition to Indian Tribes and because it shows that Congress has been made aware that the Secretary believes that he has the authority to recognize tribes. By subsequently taking the land in trust for the Colony, Congress in effect expressed its approval of the Executive's exercise of his authority to recognize Tribes."

Shortly after this Memorandum was distributed, Solicitor Frizzell is quoted from many sources as indicating that

there was still no clear answer as to the Secretarial authority to extend recognition.

On February 27, 2976, in a Department of the Interior Memorandum for the Under Secretary from the Deputy Solicitor, Mr. David E. Lindgren, the following appeared as a course of action with respect to Indian recognition:

> "1. While the law is admittedly very unclear on this subject, on balance we do not believe the Secretary today has the authority to recognize Indian Tribes. Consequently, we will defend the Stillaguamish litigation on this ground. Presumably we will obtain a definitive court ruling on this subject.
>
> 2. We do not propose to issue any Solicitor's Opinion or detailed memorandum on this subject; rather we will confine ourselves to necessary pleadings in the litigation.
>
> 3. Greg Austin will be informally advising the Secretary of the actions we will be taking.
>
> 4. We will be developing legislation for Departmental consideration that will both provide the Secretary with authority to recognize Indian Tribes and will establish rather restricted standards or criteria to be applied in determining whether a Tribe should be recognized.
>
> 5. During the past fifteen years approximately ten Tribes have been "recognized" by the Department or employees of the Department. The right of these Tribes to continued services will be protected in the litigation by means of an argument that, whether or not the Department had the authority to recognize a Tribe at that time, the Department's action was subsequently ratified by Congress by appropriating monies for purposes of providing services to those Tribes."

As of the writing of this report, there has been no variance in the Department's current position. However, as of July 12, 1976, it has been reported that a Solici-

tor's Opinion is being developed which will provide for Secretarial authority to extend recognition to Indian Tribes for certain purposes. Nothing in writing has yet materialized.

These previous excerpts from recent Department of the Interior files perhaps best demonstrate why the issue of Federal recognition has become so complex over the years. It appears to be no longer a simple review of ethnological, historical, legal or political facts concerning each Tribe but has become a review, based on the political whims of the Department of the Interior staff. There is, in fact, no official written criteria to use for the basis of whether to extend political recognition to a Tribal group. There is, however, a long history of extending such recognition to various Tribes throughout the country, as follows:

1.	Menominee Indian Tribe of Wisconsin	Congressional Statute (1973)
2.	Original Band of Sault St. Marie Chippewa Indians (Michigan)	Solicitor's Opinion (1974)
3.	Yavapai-Tonto Apache Tribe (Arizona)	Congressional Statute (1972)
4.	Nooksack Indian Tribe of Washington	Solicitor's Opinion (1971)
5.	Burns Paiute Indian Colony (Oregon	Solicitor's Opinion (1967)
6.	Upper Skagit Indian Tribe (Washington)	Deputy Commissioner's letter of June 9, 1972

7.	Sauk-Suiattle Indian Tribe (Washington)	Same as #6 above
8.	Coushatta Indians of Louisiana	Assistant Secretary's letter of June 27, 2973
9.	Miccosukee Tribe of Indians of Florida	Assistant Secretary of the Interior January 11, 1962

Since 1971, three Indian Tribes in Western Washington have received Federal recognition of their Tribal entities through Department of the Interior Administrative Decisions. The first of these, the Nooksack Tribe, was recognized in 1971 by a Solicitor's Opinion which indicated that because of previous trust dealings by the Bureau of Indian Affairs with the Tribe that the Nooksacks were eligible to organize under Section 16 of the Indian Re-organization Act.

In June of 1973, it was determined once again by Administrative Decision that the Upper Skagit and Sauk-Suiattle Indian Tribes should be recognized because in 1913 Congress had authorized the expenditure of $250.00 for a piece of land to be used jointly as a cemetery.

These three administrative actions cast further doubt as to the legitimacy of the Department's recent conclusions that the Secretary lacks sufficient authority to extend recognition. However, some of the same criteria which was used to make these determinations have been used since the 1930's in other cases. Although in the case of the Upper Skagit and the Sauk-Suiattle Tribes,

recognition has not yet resulted in a major increase in the level of services provided their people. They have at least gained their Treaty fishing rights and limited federal funding. Because they lack a landbase from which to operate, they are severely impaired in their ability to develop a Tribal economy.

Some of the more often suggested points of review are found in Felix Cohen's HANDBOOK OF INDIAN LAW (U.N.M. Press 1942), (page 272) which states that in reference to the issues of tribal existence there are five basic considerations the Department of the Interior has used in determining that a group constitutes a "tribe.":

"(1) that the group has had treaty relations with the United States;

(2) that the group has been denominated a tribe by Act of Congress or Executive Order;

(3) that a group has been treated as having collective rights in tribal lands or funds even though not expressly designated a tribe;

(4) that the group has been treated as a tribe or band by other Indian tribes; and

(5) that the group has exercised political authority over its members, through a tribal council or other governmental forms."

These five criteria which Felix Cohen stated so clearly in his book were used to review Tribal status of Tribal groups seeking to organize under the Indian Re-organization Act of June 18, 1934 (48 STAT. 984).

II. WHAT IS FEDERAL RECOGNITION?

The question of Tribal existence is the primary concern of making a determination as to whether a group of indigenous people should be denominated an "Indian Tribe." Cohen stated in his HANDBOOK OF INDIAN LAW (page 268):

> "The question of tribal existence, in the legal or political sense has generally arisen in determining whether some legislative, administrative, or judicial power with respect to Indian "tribes" extended to a particular group of Indians...the Courts have said that it is up to Congress and the Executive to determine whether a tribe exists. Thus, the "political arm of the government" would seem to be in a position to determine the extent of its power. In this respect, the question of tribal existence and Congressional power has been classed as a "political question" along with the recognition of foreign governments and other issues of international relations."

Many employees of both the Department of the Interior and the Bureau of Indian Affairs have associated the term "Federal recognition" with Tribal eligibility for Federal services. In so doing, many Tribal representatives have been taught the same wrongful association. Services are a by-product of the trust relationship between a Tribe and the United States, and not the reason for that trust relationship. The trust relationship between a Tribe and the United States exists due to a Treaty, Act of Congress, Executive Order, Administrative Decision or Judicial Decree. Federal recognition should be used as the phrase which describes

the acknowledgement by the Secretary of the Interior, as the primary agent of the Trustee, of the existence of a Tribal entity which extends political authority over a defined group of members. Such political authority includes, but is not limited to: taxation, law enforcement, licensing, control of Tribal members in exercise of treaty rights, definition of Tribal membership, as well as other attributes of self-government. The only existing definition of a recognized Tribe may be found in 25 C.F.R., Part 52.1, Section G:

> "Any Indian tribe which has entered into a treaty, convention, or executive agreement with the Federal government or whose Tribal entity has been otherwise recognized by the United States."

This definition applies only to those Tribes who voted on the Indian Re-organization Act.

It is the expressed belief of these landless Indian Tribes, situated in the State of Washington, that they have, in fact, been recognized as Indian Tribes by either Treaty or Act of Congress for many years. In spite of this previous recognition of these Tribes, the United States has denied them their inherent right to be Indians, something which has been without a basis in law. These Indian Tribes have sought from the government of the United States the right to be self-governing people, the protection of their treaty rights and the protection of their Tribal culture. As a by-product

of their protected status as Indians, these Tribes have a right to receive federal funds and services which are administered by the Bureau of Indian Affairs, the Indian Health Service and other federal agencies. Further, these Tribes seek a Tribal land base which may be used as the foundation for the development of their respective Tribal economies.

In spite of the governments attempted political genocide of these Tribal groups and the recent tactic of "stonewalling" any Tribal efforts to seek recognition, these Tribes remain intact. They remain intact for the reason that they are aware that unless they protect their own rights and powers that no one else will, especially their Trustee, the United States. For example, in the recent U.S. V. WASHINGTON (Civil No. 9213, USDC W. D. WASHINGTON), five landless or "Non-federally Recognized" Tribes have sought their off-reservation fishing right by intervention in this decision. The legal representation of these Tribes has been without the benefit of the support of their Trustee, the United States. In fact, if these Tribes had not sought to preserve their treaty right on their own, the United States would have gladly continued to ignore it. The legal representatives for the United States in this action have actively opposed these Tribes, stating that because a Tribe lacks "Federal

Recognition" as an entity, then that Tribe ceases to possess the right to an off-reservation treaty fishery. This is in complete disregard of the treaty status of these Tribes.

One Tribe, the Stillaguamish, has filed action against the government over the question of obtaining "Federal Recognition"; once again, a Tribe is forced to protect its own interest. Other action by the landless Tribes in Washington State is contemplated in the near future. The necessity of such legal action is due to the lack of a cohesive policy or criteria for obtaining federal recognition. It has been further compounded by the political jockeying of the Department of the Interior staff. There will be attached to this report extensive correspondence from the Department further demonstrating the arbitrary and capricious nature of their policy.

Six landless Tribes have thus far filed petitions with the Department of the Interior requesting a Secretarial review and determination of Tribal status in order to be acknowledged as Federally Recognized. In some cases, 27 months have passed without a determination having been made. These requests, although supported by the National Congress of American Indians and other Indian organizations, have been the victims of Interior politics.

The signators of the Steven's Treaties in 1854 and 1855 were promised that land would be set aside for their use and occupancy. A system of reservations was established in each of these treaty areas and, as such, were designated for the use of those Tribes. For example, the Snohomish or Tulalip Reservation was set aside to meet the needs of those Tribes who were party to the Treaty of Point Elliot (12 STAT 927, 1859). It is estimated at the time the Treaty was signed that there were between three and five thousand inhabitants of that Treaty-area. Approximately fifteen hundred Tribal members were assigned to go to the Tulalip Reservation. According to Senate Report No. 91-1144, dated August 27, 1970, only 165 Indians were allotted. Those who were not allotted never removed to the Reservation for the following reasons:

(1) Insufficient land was set aside;

(2) The land that was available could not provide a living for these people;

(3) Much of the land on the Tulalip Reservation was inaccessible due to heavy underbrush;

(4) Large numbers of Indian people were being "Shanghaied" from Tulalip Bay, and as a consequence, people were afraid to go there;

(5) Why leave the homesite where one could be sure of survival?;

(6) The government, after treaty times, promised many people Trust Allotments or Homesteads in their home territories. These never materialized; and

(7) There was fear of being attacked by other

hostile Indians from up the Coast.

These are perhaps the most significant factors as to why the majority of members of these Tribes remained off-reservation. In remaining off-reservation, these people in no way severed their Tribal relations. In the past two years, as the guarantee of a protected fishing right emerged from the U.S. V. WASHINGTON, supra, and as the amount of Federal funds has increased to the "recognized" Tribes, it has become increasingly common to see a reservation Tribe openly oppose the rights of these landless Tribes. In many cases, it is not only Indian against Indian, but Indians of the same family and Tribal origin in conflict with one another. Such Tribes as the Tulalip Tribes, Inc. and the Swinomish Tribal Community have expressed very strong concerns that should federal recognition be extended to these landless Tribes that somehow:

(1) their political authority will be reduced;

(2) that the landless Tribal fishery will be largely uneducated and unregulated, causing a reduction of harvestable Salmon; and

(3) that federal services will be reduced if more Tribes become eligible.

Upon discussing these concerns with representatives of these two Tribes, we have found that these fears have not only been introduced by the Bureau of Indian Affairs, but also fostered and promoted beyond

any contact with reality. In the case of the Tulalip Tribes, Inc., efforts to intervene in the Stillaguamish case and their opposition to the off-reservation treaty fishing rights has cost them in the tens of thousands of dollars in legal fees. Outside observers have indicated their extreme concern over the Tulalips' expenditures, in that had not the Bureau of Indian Affairs instilled these fears in them, they might have better spent their money on other needs of their Tribal members instead of fighting blood-related Indian brothers. The government can boast of no greater achievement than having Indians fight amongst themselves.

III. HISTORIC RECOGNITION AND RELATIONSHIPS

One of the criteria for determining Tribal existence as cited by Felix Cohen in his HANDBOOK OF INDIAN LAW, page 271, is:

> "that the group has been treated as a tribe or band by other Indian tribes."

Since before treaty times, these Tribes who are now landless have had social and economic ties with other landed Tribes throughout Washington State and the Northwest. Existing records indicate formal political associations between Tribal groups began shortly after the turn of the 20th century beginning with the creation of the Northwestern Federation of American Indians. Membership in this organization was composed of Indians from both landed and landless Tribes and no distinction relative to reservation or non-reservation status was made. At its height, approximately 17 Tribes were active members. Indicative of the high degree of cooperation between Tribal groups is the fact that the founding President, Thomas G. Bishop, was a Snohomish Indian; a succeeding President, S. J. Kavanaugh was a Samish Indian; and the President who worked actively during the period of the Indian Re-organization era was Don McDowell, a Samish Indian. All three were landless Indians who worked for their people. A later President was Chief Martin J. Sampson of the Swinomish Tribe, a Reservation Indian.

One of the more notable actions which was spawned by the Northwestern Federation of American Indians is best described in an excerpt from a letter to Mr. W. F. Dickens, then Superintendent at the Tulalip Agency, from Mr. Chas. Roblin, Special Allotting Agent at Hoquiam, Washington. Describing his efforts, Mr. Roblin stated:

> "...I was to investigate and report on unenrolled Indians of Western Washington. This matter arose as follows: For many years Thomas G. Bishop, and the "Northwestern Federation of American Indians" had made claim that there were many thousand Indians in Western Washington who had never shared in any of the benefits derived from any of the treaties of early days and who were entitled to some recognition by the Government and some remuneration for lands taken from them, either in the shape of an allotment on the Quinaielt Reservation, or by the payment of the cash equivalent of such an allotment. These were supposed to be "Indians" who were not enrolled at any agency on the coast. Mr. Bishop has made several trips to Washington on behalf of these homeless Indians, and was advised by the Office that there were no records in the Office showing who these Indians were and that there was no foundation for a request to Congress for relief for them. In 1916 Mr. Bishop urged the Office to have an enrollment made of these Indians, so as to get such information in the record. The Office agreed to have such an enrollment made, with the distinct understanding that such an enrollment would not be a recognition of any claims made by the Indians; but an endeavor to have the record show what their claims were."

To once again meet the needs of the Washington Indians, a successor organization was founded in the 1950's with membership again consisting of Indians from landed and landless Tribes with approximately 33

Tribes or Bands being associated. Charter members came from Tulalip Tribes, Inc., Swinomish Tribal Community, Lummi, Snohomish, Skokomish, Quileute, Quinault, Suquamish, Steilacoom, Samish, Skagit, Stillaguamish and Squaxin Island Tribes, to name a few. Officers were selected without regard to land status. Foremost on the agenda of this Inter-Tribal Council of Western Washington Indians was the fight against the termination policies of the 1950's and the effort to keep the Cushman Indian Hospital in Tacoma open. The group successfully held off termination, but lost the Hospital issue which deprived most Indians of much needed hospital care. The Cushman Hospital had for many years been the main source of health services for all Indians regardless of residence. With the closure of the Cushman Hospital, health services for landless Indians were slowly phased out and a new system of contract care was developed. Contract care is only provided to those Indian residents on trust lands. This policy is most recently described in an attached Memorandum.

As the organization grew, several joint meetings were held with Indians from Eastern Washington and as a gradual evolutionary process, the Inter-Tribal Council of Western Washington Indians merged into the Affiliated Tribes of Northwest Indians, a group encompassing Indians

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in Washington State, Oregon, Idaho and Western Montana. This group has once again given full membership to both landed and landless Tribes and both work together for common objectives. Affiliated Tribes has lent its support to 6 landless Tribes, all of whom (SNOHOMISH, SAMISH, STEILACOOM, STILLAGUAMISH, JAMESTOWN CLALLAM, and COWLITZ) are seeking federal recognition. On the National level, representatives from landless Tribes have participated as members of the National Congress of American Indians. In the 1950's, Mr. Hank Haykins, then Tribal Chairman of the Snohomish Tribe of Indians, served for several years as the 1st Vice-President of the National Congress of American Indians. The National Congress of American Indians has also provided the support for recognition of several of the on-recognized Tribes from Washington State.

In recent years, both landless and landed Tribes have entered into binding political relationships in such areas as Manpower Consortiums, Joint Receipt Federal Funds or Programs, membership in inter-Tribal organizations formed to provide training and technical assistance, economic development projects and countless other concerns. Under the authorization of the U.S. V. WASHINGTON, supra, several recognized Tribes have extended fishing privileges to these landless Tribes.

In 1969, Governor Daniel J. Evans of the State of

Washington, provided for full representation of the non-recognized Tribal governments through his Governor's Indian Advisory Council. During the preparation of this report, the Governor's advisor on Indian Affairs, Mr. William Jeffries, assisted the Task Force Consultants in gaining much needed Tribal input.

IV. THE TRIBES THEMSELVES

It was originally contemplated that a brief scenario of each Tribal group would be included in this report. In the interest of making this report as concise as possible, a matrix is provided on the following page. The matrix covers the considerations which have previously been used in making a determination of whether a group constitutes a "Tribe" and how those considerations affect each landless Tribe. In the matrix, if a space is left blank, no information was available at the time it was developed. Where a "no" answer is indicated, it should not be viewed as being finally conclusive as new information is always being discovered.

CONSULTANTS' NOTE:

Bureau of Indian Affairs employees at both the Western Washington Agency and the Portland Area Office freely admit that their records concerning landless Tribes have frequently been overlooked or misplaced. These records reappear only when it serves the Bureau's purpose. Page # 22 of this document is a copy of a 1974 review of "Non-recognized Tribes"by the Portland Area Office, which is refuted by the results of the matrix on page # 21.

Considerations for determining if a group constitutes a "tribe" from Cohen's Handbook of Federal Indian Law.	COWLITZ	CHINOOK	DUWAMISH	JAMESTOWN CLALLAM	SAMISH	SKOKOMISH	STILLAGUAMISH	SNOQUALMIE	STEILACOOM	KIKIALLUS	SNAKE RIVER	WALLA WALLA	WANAPUM	NOO WA MA HA	MITCHELL BAY
Group has had treaty relations with the U.S.	*No	*No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Group denominated Tribe by Act of Congress or Executive Order.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes					Ye
Group has been treated as a tribe by other Indian tribes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes					Ye
Group has been treated as having collective rights in lands or funds	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes					
Group exercises political authority over members, through a government.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes					
Group has received special appropriations		Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes				Yes	
Group is now or has ever received federal service BIA-IHS etc.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes					Ye
BIA has had regular contacts with group.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes					
Group has had frequent contacts with BIA.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes					Ye
Group has an organization which meets regularly or annually.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes					
Group has a constitution and bylaws.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes						
Group has an elected Tribal government which regularly conducts bus.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes					
Group has a tribally approved membership roles.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes					Ye
Group asserts its fishing rights.	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No			No	
Group is recognized by the Indian Claims Comm.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes				N

BLANK SPACE INDICATES INFORMATION NOT AVAILABLE AT THIS TIME

* TREATY WAS NOT RATIFIED

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DEVELOPED BY PORTLAND AREA OFFICE

FEDERAL RECOGNITION OF INDIAN TRIBES

FEDERAL INDIAN LAW: five considerations. (These have been relied upon in reaching the conclusion that a group constitutes a "tribe" or "band".)	Aboriginal	Snimish	Duwamish	Jamestown	Clallam	Kikiallus	Lower Skagit	Samish	Snohomish	Snoqualmie	Stillaguamish	Cowlitz	Chinook
1) That the group has had treaty relations with the United States.	X	X	X	X	X	X	X	X	X	X	X	NO	N
2) That the group has been denominated a tribe by act of Congress or Executive Order.													
3) That the group has been treated as a tribe or band by other Indian tribes.			X	X					X	X			
4) That the group has been treated as having collective rights in tribal lands or funds, even though not expressly designated a tribe.	X	X	X	X	X	X	X	X	X	X	X		
5) That the group has exercised political authority over its members, through a tribal council or other governmental forms.			X	X					X	X			
OTHER:													
1. Group has received special appropriations.				X									
2. Group is now or has received Federal services (BIA-IHS, etc.).			X	X					X	X			
3. Group is recognized by the Indian Claims Commission.	X	X	X	X	X	X	X	X	X	X	X		
4. BIA has had regular contacts with the group or its representatives.			X	X					X	X			
5. Group has had frequent contacts with the BIA.			X	X					X	X			
6. BIA has assisted group with special projects.				X									
7. Group has an organization which meets regularly and annually.			X	X					X	X			
8. Group has elected officials and tribal council.			X	X					X	X			
9. Group has a constitution and bylaws.			X	X					X	X			
10. Group has an official tribal roll it has adopted.			X	X					X	X			
11. Group's council meets regularly to conduct tribal business.			X	X					X	X			
12. BIA has issued I.D. cards to members of group for fishing, etc.													
13. Group invited to BIA meetings with northwest tribes.			X	X					X	X			
14. Group has been active in asserting its fishing rights.			X	X					X	X			
CONCLUSION: ELIGIBLE -- Y for Yes. N for no.	N	Y	Y	N	N	N	Y	Y	N	N	N		

V. TRIBAL NEEDS

Earlier in this report, mention has been made of some of the general effects the lack of federal recognition has had on these landless Indian Tribes. It would be almost an impossible task to accurately assess the quantity of services which might be required to meet the needs of these landless Tribes. It is, at this time, feasible to present a listing of those problems and needs which the Tribes in Washington State have addressed in their testimony to both the formal hearing conducted on March 5, 1976 by Task Force #10, as well as at several informal hearings and interviews which were conducted in the field by the Washington State Consultants. The majority of the discussion will relate to the involvement of the Federal government. This is necessitated in that the State of Washington feels no special obligation to "provide a special relationship with these Tribes." It regards the off-reservation Indians as merely a citizen of the state with no special rights.

(1) The lack of Bureau of Indian Affairs protection of and fiscal support of Tribal Government has severely impaired the ability of the Tribe to exercise its political authority over their Tribal members.

(2) The lack of Bureau of Indian Affairs protection of the reserved treaty right of fishing for many Tribes

has meant the loss of both individual and Tribal income or ecoomic base.

(3) The alleged lack of federal recognition of these Tribes by the Bureau of Indian Affairs has caused other Federal agencies to deny participation in programs which would serve to enhance the health, education and general welfare of their Tribal membership.

(4) The denial of health services, provided by the Indian Health Service, to the members of non-federally recognized Tribes has caused the greatest hardships to the young and the old, as some of the Tribal members in their 20's, 30's, 40's and 50's, if employed, are covered by third party insurance.

(5) The Bureau of Indian Affairs' refusal to provide educational services to the members of the Landless Tribes has created a hardship. The Bureau first reduced the number of Indians who were eligible to participate in educational programs by the establishment of a blood Quantum requirement. Later, in addition to the blood quantum, a restriction as to residency was established. Although the majority of non-reservation Indians' educational level may tend to be higher than those on the reservation, the educational needs are a long way from being met.

(6) The lack of a Tribal land base which may serve as the basis for Tribal development and self-sufficiency is a major concern to the landless Tribes. The amount

of lands needed by each Tribe to provide a living for those members wishing to live on the land varies from Tribe to Tribe. In most cases, this land must front on a river or the marine waterways.

(7) Landless Tribes have been unable to receive Indian Claims Commission judgment awards in any manner other than a per capita distribution. Many Tribes have requested disbursements of the judgment funds in a lump sum or a portion to purchase land to be held in trust. These requests have been denied.

(8) The life of the Indian Claims Commission is too short. It needs to hear other types of claims, other than land issues.

(9) The housing needs of the landless people in some cases do not meet the local minimum standards for health, safety and construction.

(10) Alcoholism and Drug abuse amongst the landless Tribal members is extremely high. There appears to be a direct correlation with the cross cultural conflict many landless people have experienced.

VI. RECOMMENDATIONS OF THE LANDLESS TRIBES

On July 12, 1976, 18 representatives from 9 landless Tribes met under the auspices of the Governor's Indian Advisory Council, Non-Reservation Council, to develop and adopt a position paper and recommendations about the issue of federal recognition as it has affected them. This paper should be widely circulated as it presents some very clear recommendations. The text of this position paper is contained in this section.

"There are numerous Indian tribes in Washington State which do not occupy reservations or have land held in trust for them by the United States government. These landless Indian Tribes have been popularly regarded as extinct, although the Governor's Indian Advisory Council recognizes fifteen of them. These Tribes include: Snohomish, Cowlitz, Duwamish, Jamestown Band of Clallam, Samish, Steilacoom, Snoqualmie, Mitchell Bay, Stillaguamish, Chinook and others. In spite of the enormous odds against their survival, they continue to function as Tribal entities, following the long line of traditional leadership as demonstrated in the 1800's by Seattle, Chief of the Duwamish and Suquamish Tribes, Pat-ka-nam, Chief of the Snoqualmie and Snohomish Tribes, and Leschi, War Chief of the Nisqually Tribe.

For many years after the signing of the Treaties in

1855, many Indian Tribes continued to live as they had in the times before the White Man came. Each of the now landless Tribes that signed the treaties, and several did not, were promised but never received reservations. Only with the passage of time did it become apparent that the landless Tribes were going to be ignored and the Bureau of Indian Affairs would not extend significant services to them.

The Indian Claims Commission was once regarded as an institution responsive to the long standing interests of Indians and able to correct past wrongs. With the passage of time, however, it has become regarded in Indian Country as a part of the on-going effort to strip Indians of their land and their rights. Also, landless tribes increasingly consider regaining a land base to be more important than receiving monetary settlements.

No-reservation Indian Tribes have been severely hampered by official neglect resulting in a situation in which thousands of Indians are not recognized officially as Indians, do not have their rights as Indians protected and are not receiving services from the Bureau of Indian Affairs, the federal agency specifically authorized to provide services to "Indians throughout the United States."

The policy of not recognizing some Indians and their rights yet recognizing the rights of other Indians,

principally those living on reservations, is a failure of the United States to fulfill its commitments made to all Indians through treaties and various statutes. The failure of the United States to keep its commitment to assist and protect the landless tribes has contributed to the deterioration of the landless Tribes' ability to determine their future.

The Bureau of Indian Affairs has consistently excluded Indians who do not live on Indian reservations from its service population. The landless tribes have been notably excluded from Bureau consideration in spite of a specific authorization through the Snyder Act which requires that the Bureau of Indian Affairs assist Indians throughout the United States. Failure of the Bureau to serve landless Tribes has seriously hampered the ability of landless Tribes to provide proper health care, education, and continuing employment for their people.

The State of Washington has also ignored the interests of landless tribes. Consequently, it has acted to limit our governmental powers, although it may not have done so intentionally.

The landless Tribal claim for justice has been advanced consistenly through our individual Tribal governments since the treaty-signing period of the 1850's. It is not presented here for the first time. It is not what the cynical might believe is the last ditch effort

to enhance the potential for monetary awards which would satisfy wounded egos and improve our economic situation at the expense of the majority. It is a request that the promises made to us be kept.

For many years our leaders, acting in good faith, have accepted the promises made to them and looked forward to official responses to their legal and moral rights. The nature and enormity of the situation confronting them has been recognized only recently. This is the first time that the landless Tribes have attempted to speak as one voice, but it will not be the last time we act together.

The more than 7,000 landless Indians want to secure their Tribal heritage and Indian rights as they gain a prosperous future for their children. To do so, they want land to be held in trust for them by the federal government because this relationship would reaffirm their status as Indian people in the eyes of the government.

The landless Tribes are still looking forward to the implementation of President Nixon's Indian self-determination policy and its application to our situation.

We recommend that:

1) THE CONGRESS OF THE UNITED STATES DIRECT THE PRIMARY AGENT OF THE TRUSTEE, THE SECRETARY OF THE INTERIOR, TO IMMEDIATELY EXTEND FULL

FEDERAL RECOGNITION TO THOSE INDIAN TRIBES, GROUPS OR BANDS WITH WHOM A LEGAL RELATIONSHIP EXISTS DUE TO TREATY, ACT OF CONGRESS, EXECUTIVE ORDER, ADMINISTRATIVE DECISION, INDIAN CLAIMS COMMISSION OR JUDICIAL DECREE.

2) THAT THE SECRETARY MAKE A FULL CASE-BY-CASE REVIEW, BASED ON AN ESTABLISHED AND WELL DEFINED CRITERIA FOR RECOGNITION BASED ON ETHNOLOGICAL, HISTORICAL, LEGAL AND POLITICAL FINDINGS.

3) THAT THE SECRETARY ONCE MAKING A DETERMINATION TO EXTEND FULL FEDERAL RECOGNITION TO A TRIBE, THEN IMMEDIATELY COMMENCE TO PROVIDE FOR THE PROTECTION AND THE FULFILLMENT OF THE FIDUCIARY RELATIONSHIP AS MAY BE REQUESTED BY THESE TRIBES.

4) THAT IN EXTENDING FULL FEDERAL RECOGNITION TO THESE TRIBES, THAT THE SECRETARY WILL SEEK FROM CONGRESS AN INCREASE IN THE ALLOCATIONS TO THOSE AGENCIES WHICH ARE CURRENTLY PROVIDING SERVICES TO INDIAN TRIBES SO THAT NO SERVICES TO OTHER TRIBES ARE REDUCED.

5) THAT THE SECRETARY SHALL ALSO PROVIDE FOR SUCH TRUST LANDS AS MAY BE REQUIRED FOR THE NEED AND EXCLUSIVE USE OF THESE LANDLESS TRIBES.

6) THAT THE INDIAN CLAIMS COMMISSION AWARDS BE

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MODIFIED BY CONGRESS TO REFLECT THE TRIBAL ATTITUDES IN INDIAN COUNTRY TO PROVIDE LAND AS WELL AS MONETARY PAYMENT FOR TRIBAL CLAIMS TO BE DISBURSED OR UTILIZED ACCORDING TO A TRIBALLY APPROVED PLAN.

7) THAT THE BUREAU PROVIDE TECHNICAL ASSISTANCE TO LANDLESS TRIBES IN RE-ESTABLISHING A LAND BASE FOR EACH TRIBE AND PROVIDE THE NECESSARY FUNDS FOR OPERATION AND ADMINISTRATION OF THE TRIBAL GOVERNMENT. . . We are intent upon managing our own affairs and would therefore regard any effort of the Bureau to manage our affairs as undue interference into the self-governing responsibilities of the Tribe. It is in this context that we emphasize the need for BIA concentration on technical assistance rather than management. Over the years, we have on our own developed certain management capabilities which have resulted in tribally initiated efforts to serve our Indian people, but we recognize the need for technical and financial assistance.

8) THAT THE BUREAU BE ORGANIZED SO AS TO INCLUDE THE LEGAL CAPABILITY TO PROTECT ALL INDIAN RIGHTS TO FISH, WATER, AND LAND RESOURCES AS WELL AS EXEMPTION FROM STATE TAXATION FOR ALL INDIAN

TRIBES. . . This capability should be within the Bureau, independent of the Department of the Interior and Justice Department.

9) THAT THE BUREAU BE INDEPENDENT OF THE DEPARTMENT OF THE INTERIOR, FREE FROM THE CONFLICTS OF INTERESTS OF THAT DEPARTMENT. . . It would be of greater use to Indians if the Bureau functioned administratively under the Congress and was not a political football.

10) THAT THE BUREAU BE STRUCTURED TO ENCOURAGE PERPETUAL INDIAN PARTICIPATION IN BUREAU POLICY-MAKING. . . Indians have been too long told how to arrange their affairs rather than allowed to actively initiate efforts on their on behalf. It seems more important to Bureau officials that the Bureau of Indian Affairs be served and protected rather than the Indian people. We assert that "self-determination" for our people can truly be a way of life if Indians have access to all institutions which impact upon the lives of Indian people.

11) THAT THE BUREAU BE MORE ACCESSIBLE TO INDIANS, AND WOULD BE BY LOCATING ITS FACILITIES CLOSER TO THE PEOPLE IT SERVES WITHOUT REDUCING THE CURRENT LEVEL OF SERVICES. . . Indians are a very diverse set of nations, tribes and bands. It would be appropriate then to organize the

Bureau from the local level, authority to serve the diverse needs of Indian people. Also, Bureau offices should be near our Tribes as they now are near federal Indian reservations. Local offices should be allowed direct authority from the national office and the area offices should be eliminated. This would provide the local office direct ability to gain authorization for local efforts as defined by the Tribes. Elimination of the area office would also represent a major administrative saving while increasing the Bureau's ability to directly serve Indians.

12) THAT THE BUREAU HAVE ITS REGULATIONS AND GUIDELINES OVERHAULED TO REFLECT GREATER FLEXIBILITY IN DEALING WITH THE DIVERSE INTEREST OF INDIANS. . . This could be accomplished by a congressionally established Tak Force including Indians from all areas of Indian country with specific authorization to re-write the Bureau's regulations and guidelines. Non-Indians should be included as their skills warrant.

13) THAT THE CONGRESS CONSOLIDATE ALL ESSENTIAL SERVICES FOR INDIANS AND INDIAN TRIBES UNDER A SEPARATE INDEPENDENT AGENCY WHICH WILL BE RESPONSIVE TO THE NEEDS OF INDIAN PEOPLE."

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VII. CONCLUSIONS

The landless Tribes in Washington State are the living victims of the United States' efforts to destroy Indian people. The policy which has governed the actions of the Department of the Interior and the Bureau of Indian Affairs is merely the paper continuance of the once so popular military genocide. These people, instead of being killed or wounded by cannon or rile, have simply been buried alive in the maze of government bureaucracy. This is not accidental but a grievously intentional act on the part of the Trustee.

By ignoring the existence, and as such the needs, of these Tribes, the governments' hope that they will simply disappear after a period of time must be fading. After 122 years of being shoved, manipulated, starved, and finally ignored, these Tribes have not gone away but in many respects they have grown stronger and perhaps even more sophisticated than some of their reservation brothers. They are none-the-less Indians.

As time has passed since the treaties were signed and the sophistication of the White Man's political ways became learned by these people, the government found it necessary to keep changing the methods by which recognition might be obtained. Time after time after time. when a new Superintendent or Area Director would arrive, a new hope for federal recognition would be raised.

Promises were made "Do this and you will be recognized ....develop a Tribal Roll, write a Consitution, hold regular meetings, adopt White Man's parliamentary rules, forget the Indians ways. . .and then my children, you will be recognized."

The Department of the Interior and the Bureau of Indian Affairs, the agencies which have formulated the policy of not recognizing these Tribes share the blame equally with the United States Congress, who is responsible for allowing these agencies to continue in this manner without proper Congressional oversight. Members of the United States Congress have been aware of this problem since at least 1915 and in more recent years, since the 1960's. On May 9, 1972, 59 House members wrote to the then Secretary C. B. Rogers Morton endorsing the proposal that the Bureau of Indian Affairs services be extended to non-reservation groups. This request, which was read into the Congressional Record on May 10, 1972, led nowhere. No changes in the Interior Department policy were felt by any Indian. Still the policy goes on. The only thing which now appears to have an influence is the political whims of the Interior Department Staff.

The recommendations contained in Section VI of this report are not new. Many of these recommendations first appeared in a Task Force Report developed in 1973 under

the auspices of Daniel J. Evans, Governor of the State of Washington, entitled "The People Speak....". This report, although widely circulated, appears to have had little impact on its Congressional readers.

It is the findings of the Task Force Consultants that the Congress of the United States has the complete authority and obligation to immediately enact legislation reclarifying the Secretary of the Interior's authority to extend political recognition to those Tribal entities with whom the United States has a fiduciary or trust relationship. Failure on the part of Congress to provide statutory clarification of this issue is tantamount to malfeasance of their obligation to Indian people.

The Landless Indians of Washington State are a strong group of people. This strength lies in the fact that when a member of a Landless Tribe is discriminated against by the non-Indian community, they have had no sanctuary of a reservation in which to hide. Many of the reservation Indians have made statements that the Landless Indian has never known discrimination. Perhaps, the Landless Indian has felt a more acute type of discrimination, that of his Trustee, the United States Government.

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4) Thomas G. Bishop, SACRED PROMISES MADE 61 YEARS AGO (1915)

5) Testimony of the March 5, 1976 A.I.P.R.C. Task Force #10 hearing at Olympia, Washington

6) Miscellaneous letters and documents of the Department of the Interior, 1934-1976

SPECIAL ACKNOWLEDGEMENTS:

Mr. George LaVatta, Retired Bureau Superintendent

Mrs. Mary McDowell Hansen, Samish Tribal Elder and Historical advisor

Mr. William R. Jeffries, Governor's Advisor on Indian Affairs

Mr. David Getches, Staff Attorney, Native American Rights Foundation

Ms. Jeanne Whiteing, Staff Attorney, Native American Rights Foundation

APPENDIX I — Additional Testimony of 4/24/1976

APPENDIX II — SACRED PROMISES by Thomas G. Bishop

APPENDIX III — Miscellaneous support

APPENDIX IV — Stillaguamish Chronology

APPENDIX V — Tribal opposition to Recognition

APPENDIX VI — Written statements

APPENDIX VII — Health

APPENDIX VIII — Interior and Bureau Documents

a. Letter 4/10/74, to L. Meeds from Commissioner (BIA)

b. Letter 11/21/74, to J. Downes from Commiss'r (BIA)

c. Letter 12/13/74, to L. Meeds from Commissioner (BIA)

d. Letter 2/13/75, to L. Bell from Commissioner (BIA)

e. Letter 2/26/75, to L. Bell from Solicitor (DOI)

f. Letter 4/7/75, to J. Willup from Commiss'r (BIA)

g. Letter 5/9/75, to L. Meeds from Act. Sec. Int. (DOI)

h. Letter 5/22/75, to H. Jackson from A. Sec. Int. (DOI)

i. Letter 10/20/75, to C. Trimble from Dep. Sol. (DOI)

j. Letter 10/21/75, to L. Meeds from Dep. Sol. (DOI)

k. Letter 10/12/36, to F. Christy from Comm. (BIA)

l. Concurring note of F. S. Cohen on Memo 11/9/36, to F. S. Cohen from K. Meiklejohn (DOI)

m. Memo 3/6/37, to Commissioner from Solicitor (DOI)

o. Memo 3/15/37, to Commissioner from Solicitor (DOI)

p. Memo 1/29/41, to Commissioner from Solicitor (DOI)

q. Memo 5/1/37, to Commissioner from Act. Sol. (DOI)

United States Senate
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
WASHINGTON, D.C. 20510

March 6, 1978

Honorable Cecil D. Andrus
Secretary
Department of Interior
Washington, D. C.

Dear Mr. Secretary:

I write to request a complete and detailed budget justification for two items in the FY 79 Interior Department budget: The Bureau of Indian Affairs Trust Responsibilities/Rights Protection activity and the Office of the Solicitor.

For the Trust Responsibilities/Rights Protection activity, please provide me with a case-by-case breakdown in each instance where funds are proposed to be expended for litigation. This should include a narrative description of each case, past amounts obligated for each case, the number of permanent positions assigned to litigation and funds for attorneys' fees. I also request a detailed justification for the activities entitled "Boldt decision", "Attorney fees", "Hunting and Fishing Treaty Rights Support", and "Unresolved Indian Rights Issues". For Trust and Rights Protection for the State of Washington, I would appreciate a detailed justification by Tribe or Agency Office, along with a description of how these funds are to be expended by each Tribe or Agency Office.

For the Office of the Solicitor, please provide me with a similar justification, with particular emphasis on funds for litigation and permanent positions assigned to litigation.

Lastly, please identify any other expenses in the Department's budget related to these matters.

Sincerely,

Warren G. Magnuson

WARREN G. MAGNUSON, U.S.S.

WGM:mjm
cc: Hon. Robert C. Byrd, Chairman, Interior Appropriations Subcommittee, U. S. Senate

Senate

March 1, 1978

Honorable Griffin B. Bell
Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

During our recent discussion we spoke about the Federal government's role in representing Indian tribes pursuant to the trust relationship vis-a-vis its responsibilities to non-Indians.

Relations between Indians and non-Indians have become strained in many areas as Indians have begun claiming rights to natural resources and jurisdiction over non-Indians. The Federal government's advocacy of the Indians' claims has seriously contributed to the tension. This is especially so when Indian claims adversely affect the rights or livelihood of non-Indians. Both Indians and non-Indians in my own Washington State now endure the divisive affects of the infamous 1974 fishing rights decision handed down in U.S. v. Washington while the resource--and the livelihoods of all those who rely on it--is in jeopardy.

Many non-Indians object to their tax dollars being used by the Federal government to defeat their rights in court, while at the same time, there are no Federal personnel or funds used to protect their rights. Especially disconcerting is the Federal advocacy of cases in which Indian tribes claim jurisdiction over non-Indians when non-Indians do not have the right to participate in Indian tribal government.

While I recognize the historic trust relationship of the Secretary of the Interior to represent the best interest of Indian tribes, the trend in recent years has been to extend the meaning of that relationship to include the resources of the entire Federal government. Although there may be some legal or moral authority to extend that definition, I believe that a thorough objective review of that policy should be undertaken. In short, a clarification of the Federal trust responsibility to Indian tribes is needed.

Additionally, the profusion of Indian claims to natural resources and jurisdiction over non-Indians has highlighted the inadequacy of the judicial process to resolve these conflicts between Indians and non-Indians. Recent judicial decisions have not served to ease the tensions that engulf Indian/non-Indian relations. Rather, animosity has increased, litigation costs proliferate and uncertainty prevails.

Because the judicial process seems unable to handle the task of resolving major Indian claims to natural resources and jurisdiction, it is imperative that your Department, in conjunction with the other affected agencies, develop methods of reducing litigation while increasing peaceful non-litigous resolution of such claims which would be fair to Indians and non-Indians alike.

Because of the importance of this matter, I urge your early attention to, and constructive comments on, how this problem can be best resolved.

Sincerely yours,

Henry M. Jackson
Chairman

HMJ:rdfj

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STATEMENT OF RUDOLPH C. RYSER, EXECUTIVE DIRECTOR, SMALL TRIBES ORGANIZATION OF WESTERN WASHINGTON

Mr. RYSER. Mr. Chairman, Senate bill 2375 is strongly supported by the Small Tribes Organization of Western Washington. We find contained in it the very kinds of ideas that we believe all tribes really have been striving to get contained in legislation for a long time.

There is one problem, however, that is not mentioned in the bill that I would hope could be considered, if not in the bill, at least by the Department of Interior. At the Small Tribes Organization of Western Washington, we have had several tribes become "recognized tribes"—as the term is used—in the past 4 or 5 years. One of the things we have discovered is the most alarming kind of thing.

These tribes have begun to be recognized by the United States for services or for certain purposes only. But then all of the other things that are normally attached to the protection of a tribe or the support of tribal rights are somehow forgotten or delayed. We find this an alarming kind of thing to happen, mainly because what we are ending up with are tribes of yet another class. We are ending up with tribes particularly without land. We are ending up with tribes whose rights—they may be fishing or they may have to do with governance of their own people—somehow they are cut because the United States has only decided to provide services to those people.

So, we create a kind of rural poor dependent upon a Federal agency.

We would like to see those kind of problems resolved for the future. The legislation you are proposing, and the regulations that the Department of Interior is considering, are supposed to resolve a long-standing problem. But we hope it would not start a new problem, and that is the creation of a third class or some other kind of class of tribe.

We see, in present-day activities, Senator Jackson and Senator Magnuson attempting to undercut tribal rights by overt political efforts to pressure departments into retreating from the support of tribal rights. We see that as most alarming.

We see these kinds of actions as the kinds of things that your bill and Interior actions might try to help get pushed aside. The tribes that are going to be recognized in the near future are going to be pretty weak. They are going to be very easily slapped aside by States and Senators and anybody else who might not see their interest as being paramount or important.

We suggest then that your bill include perhaps a statement or an indication of what will happen after recognition takes place. We believe that you could include a phrase that would say something to the effect that, pursuant to the recognition of an Indian tribe by the United States, the United States would undertake to negotiate a trust agreement with the tribe. That would spell out in fairly clear detail over a period of time the kinds of assistance the United States would be prepared to provide to that tribe, at what particular time, the kinds of work that would be undertaken to insure that the tribe had a land base of its own. These are the kinds of agreements that normally would be undertaken with any other political group to insure its survival. That would go beyond merely dealing with service kinds of considerations.

We believe a bilateral, negotiated trust agreement with tribes is essential to their future and to their survival. It is, in fact, a probable result from any of these things that you could end up with a long list of recognized tribes without land, without sufficient governmental capabilities , and indeed a whole new constituency for the Bureau of Indian Affairs that really isn't anything more than a group that is disappearing.

Thank you.

Chairman ABOUREZK. Thank you. I now place your written statement in the record.

[Mr. Ryser's prepared statement follows:]

TESTIMONY OF RUDOLPH C. RYSER REGARDING SENATE BILL 2375 BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, APRIL 18, 1978

Mr. Chairman as you may know the introduction of Senate Bill 2375 has caused quite a stir in Indian country. There has been more dialogue among tribal officials on this subject than on any subject in the past five months.

Some of the concerns that have been raised include worries about reduced Federal dollar commitments to protected tribes as more tribes are added to the list of recognized tribes; concerns about standards of membership among tribes which will be recognized; and several tribes like the Tulalip tribe have expressed concerns about having to share natural resources with neighboring tribes like the Snoqualmie and Snohomish.

The STOWW organization is convinced that these and other concerns like them a e favorably resolved in S. 2375. There are some matters that are not touched on by the Senate Bill. These include methods of resolving tribal land questions and the future role the United States will play as a tribe is restored.

Since 1970 four member tribes of the Small Tribes Organization of Western Washington have been recognized by administrative action or congressional act. In each case recognition has meant eligibility for services to tribal members. After the recognition of these tribes it appears that a trend is emerging. The trend seems to be toward "recognition of tribes for certain purposes" and "no action to establish a sufficient land base for the needs of the people". This trend is dangerous. A tribal community must be recognized fully as a legal political entity and it must have territory for a home and abiding place sufficient to its present and future needs. To ignore the land is to create yet another class of tribal people who are forced to be depend-

ent upon a Federal Government agency.

Because we often refer to the Department of the Interior in legislation and administrative actions the impression is often given that only the Department of the Interior has any responsibilities to Indian tribes. Mr. Chairman, it must be made clear that when the Department of the Interior or the Bureau of Indian Affairs act in relation to Indian tribes they are acting on behalf of the U.S. Government as a whole. The fact that these instruments of government are specifically designated to carry out certain functions with Indian tribes does not diminish the responsibilities of other Departments to carry out the trust obligations of the U.S. Government.

Senators Jackson and Magnuson wrote Attorney General Griffin Bell a letter in which they say that there is a trend in recent years to extend the meaning of the trust relationship to the "entire Federal Government" Mr. Chairman, I submit there is and has been a trend to narrow U.S. obligations to protect and defend tribal governments, their people and their natural resources. The Senators from the State of Washington demonstrate vividly in their March 1, 1978 letter to the Attorney General that they are intent upon forcing agencies of the U.S. Government to shrink from their lawful and constitutional responsibilities. Unless the U.S. Government as a whole is charged with carrying out treaty and constitutional obligations, Indian tribal resources will be confiscated by the U.S. or stolen by unscrupulous corporations. S. 2375 must work to strengthen U.S. resolve to protect and defend Indian tribes, not narrow or reduce it.

To solve the land question and the government-wide trust question, I suggest that S. 2375 include language that requires the United States

to enter into a Term bilateral trust agreement with each tribe. This agreement would spell out actions and timetables for full restoration and protection of the tribe. The precedent has been set in the menominee restoration. An orderly, intelligent and timely plan for each tribe would permit development of capabilities in both the U.S. Government and in the tribal government.

The bilateral trust agreement would operate for a specific term agreed to by both the tribal government and the U.S. Government. Such an agreement would insure faithful execution of responsibilities in both the tribe and the U.S.

Mr. Chairman, we request that the record be left open for a specific period of time - 30 days - so that some of our member tribes might add to our oral testimony. Finally, I would submit for the record the correspondence by Senators Jackson and Magnuson referred to in my testimony.

Chairman ABOUREZK. The next witness is Mr. Adolph Dial.

STATEMENT OF ADOLPH DIAL, LUMBEE, AND MEMBER, AMERICAN INDIAN POLICY REVIEW COMMISSION

Mr. DIAL. Mr. Chairman, all of us are drinking from the same glass. I hope we will continue to do so, the federally recognized and the nonfederally recognized.

Senator Abourezk and other distinguished members of this committee, I am more than pleased to appear before you on this historic occasion. As all of you probably know, I was a member of the American Indian Policy Review Commission. I am a Lumbee Indian and a member of the so-called nonfederally recognized Indians.

Chairman ABOUREZK. Adolph, I might say that you were an extremely valuable member of the American Indian Policy Review Commission. You represented your constituency very ably and very well. Everybody on the Commission appreciated that very much. I just want to make that public announcement right now.

Mr. DIAL. Thank you, Senator.

I wish to point out there are more than 400 tribes within the Nation's boundaries; and, yet, the Bureau of Indian Affairs services only 289. More than 100,000 Indians, members of "unrecognized" tribes, are excluded from the protection and privileges of the Federal-Indian relationship. Inconsistencies and oversights in the Indian policy have failed many unrecognized Indians. There is no legitimate foundation for denying Indian identification to any tribe or any community. The BIA has no authority to refuse services to any member of the Indian population.

Nonrecognition is incomprehensible to Indians who have been neglected and forgotten. There is no valid reason for it. The term "nonrecognized" is as obsolete as the circumstances that led to its invention. At the root of this problem is the identification of the rights of all Indian people to Federal Indian programs, laws, and protections.

Indian people have been denied services either because they are not identified as "Indians" or "tribes" as the terms are used in the U.S. policy and law. To dispel this problem, and to direct the Federal-Indian policy to all Indian people, the term "Indian tribe" is defined by any one of a series of definitional factors enumerated in the recommendations of the American Indian Policy Review Commission. The Commission's final report, volume I, page 461, states:

> The term "Indian tribe" is defined by any of a series of definitional factors enumerated in the recommendations which follow, and is intended to apply to all Indian people, including Indian communities, bands, clans, societies, alliances and groups, whether amalgamations or fragmentations of Indian tribes; but its use in this chapter is not meant to divide any presently recognized tribal entities or to apply to any people who are already formally recognized as part of a tribe by the United States Government for the purposes of Federal Indian law or programs.

The Commission's report points out murky precedents, quirky administration, indefensible bureaucratic decisions, colonialism harsh on Indians, the removal policy, and landless Indians, to mention a few—all having denied American Indians justice and a decent place under the sun.

The American Indian Policy Review Commission was composed of a cross-section of the national Indian community, Senators and Congressmen renowned throughout the land, 11 task forces staffed with the finest minds in the area of Indian affairs, consultants with expertise in bureaucratic failure, a superlative staff with tireless devotion to the enormous task placed before them, and a budget of almost $3 million. It would be like reinventing the wheel to stop the progress already in motion.

Thank you for your time and undivided attention.

Chairman ABOUREZK. Thank you, Mr. Dial. Your prepared remarks will become a part of the record.

[The prepared statement of Mr. Dial follows:]

TESTIMONY PRESENTED BY MR. ADOLPH L. DIAL
BEFORE THE UNITED STATES SELECT COMMITTEE
ON INDIAN AFFAIRS, WASHINGTON, D.C. APRIL 18, 1978

SENATOR ABOUREZK AND OTHER DISTINGUISH MEMBERS OF THIS COMMITTEE: I AM MORE THAN PLEASED TO APPEAR BEFORE YOU ON THIS HISTORIC OCCASION. AS ALL OF YOU PROBABLY KNOW, I WAS A MEMBER OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION. I AM A LUMBEE INDIAN AND A MEMBER OF THE SO-CALLED NONFEDERALLY RECOGNIZED INDIANS.

I WISH TO POINT OUT THERE ARE MORE THAN 400 TRIBES WITHIN THE NATION'S BOUNDARIES AND, YET, THE BUREAU OF INDIAN AFFAIRS SERVICES ONLY 289. MORE THAN 100,000 INDIANS, MEMBERS OF "UNRECOGNIZED" TRIBES, ARE EXCLUDED FROM THE PROTECTION AND PRIVILEGES OF THE FEDERAL-INDIAN RELATIONSHIP. INCONSISTENCIES AND OVERSIGHTS IN THE INDIAN POLICY HAVE FAILED MANY UNRECOGNIZED INDIANS. THERE IS NO LEGITIMATE FOUNDATION FOR DENYING INDIAN IDENTIFICATION TO ANY TRIBE OR COMMUNITY. THE BIA HAS NO AUTHORITY TO REFUSE SERVICES TO ANY MEMBER OF THE INDIAN POPULATION.

NON-RECOGNITION IS INCOMPREHENSIBLE TO INDIANS WHO HAVE BEEN NEGLECTED AND FORGOTTEN. THERE IS NO VALID REASON FOR IT. THE TERM "NON-RECOGNIZED" IS AS OBSOLETE AS THE CIRCUMSTANCES THAT LED TO ITS INVENTION. AT THE ROOT OF THIS PROBLEM IS THE IDENTIFICATION OF THE RIGHTS OF ALL INDIAN PEOPLE TO FEDERAL INDIAN PROGRAMS, LAWS, AND PROTECTIONS. INDIAN PEOPLE HAVE BEEN DENIED SERVICES EITHER BECAUSE THEY ARE NOT IDENTIFIED AS "INDIANS" OR AS "TRIBES" AS THE TERMS ARE USED IN THE UNITED STATES POLICY AND LAW. TO DISPEL THIS PROBLEM, AND TO DIRECT THE FEDERAL-INDIAN POLICY TO ALL INDIAN PEOPLE, THE TERM "INDIAN TRIBE" IS DEFINED BY ANY ONE OF A SERIES OF DEFINITIONAL FACTORS ENUMERATED IN THE RECOMMENDATIONS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION. THE COMMISSION'S FINAL REPORT, VOLUMN I, PAGE 461 STATES:

"THE TERM 'INDIAN TRIBE' IS DEFINED BY ANY OF A SERIES OF DEFINITIONAL FACTORS ENUMERATED IN THE RECOMMENDATIONS WHICH FOLLOW, AND IS INTENDED TO APPLY TO ALL INDIAN PEOPLE, INCLUDING INDIAN COMMUNITIES, BANDS, CLANS, SOCIETIES, ALLIANCES AND GROUPS, WHETHER AMALGAMATIONS OR FRAGMENTATIONS OF INDIAN TRIBES; BUT ITS USE IN THIS CHAPTER IS NOT MEANT TO DIVIDE ANY PRESENTLY RECOGNIZED TRIBAL ENTITIES OR TO APPLY TO ANY PEOPLE WHO ARE ALREADY FORMALLY RECOGNIZED AS PART OF A TRIBE BY THE UNITED STATES GOVERNMENT FOR THE PURPOSES OF FEDERAL INDIAN LAW OR PROGRAMS."

THE COMMISSION'S REPORT POINTS OUT MURKY PRECEDENTS, QUIRKY ADMINISTRATIONS, INDEFENSIBLE BUREACRATIC DECISIONS, COLONIALISM HARSH ON INDIANS, THE REMOVAL POLICY, AND LANDLESS INDIANS, TO MENTION A FEW; ALL HAVING DENIED AMERICAN INDIANS JUSTICE AND A DECENT PLACE UNDER THE SUN.

THE AMERICAN INDIAN POLICY REVIEW COMMISSION WAS COMPOSED OF A CROSS-SECTION OF THE NATIONAL INDIAN COMMUNITY, SENATORS AND CONGRESSMEN RENOWNED THROUGHOUT THE LAND, ELEVEN TASK FORCES STAFFED WITH THE FINEST MINDS IN THE AREA OF INDIAN AFFAIRS, CONSULTANTS WITH EXPERTISE IN BUREAUCRATIC FAILURE, A SUPERLATIVE STAFF WITH TIRELESS DEVOTION TO THE ENORMOUS TASK PLACED BEFORE THEM, AND A BUDGET OF ALMOST $3 MILLION DOLLARS: IT WOULD BE LIKE RE-INVENTING THE WHEEL TO STOP THE PROGRESS ALREADY IN MOTION.

THANK YOU FOR YOUR TIME AND UNDIVIDED ATTENTION.

RESPECTFULLY SUBMITTED,

Adolph L. Dial

MR. ADOLPH L. DIAL

Chairman ABOUREZK. Next we will hear from Dexter Brooks, attorney.

STATEMENT OF DEXTER BROOKS, ATTORNEY, PEMBROOKE, N.C.

Mr. BROOKS. Mr. Chairman, it is important at the outset that we establish just what we are, and are not, talking about. Fundamental to our purpose is an understanding of how the term "Indian" may, when used in different contexts, have several meanings. This point is best illustrated by Felix S. Cohen:

> The term "Indian" may be used in an ethnological or in a legal sense. Ethnologically, the Indian race may be distinguished from the Caucasian, Negro, Mongolian, and other races. If a person is three-fourths Caucasian and one-fourth Indian, it is absurd, from the ethnological standpoint, to assign him to the Indian race. Yet legally such a person may be an Indian.

Left unsaid by Cohen, but equally true, is the fact that an individual may be a racially pure Indian, and yet legally not be an "Indian" for purposes of some Federal programs. Such is especially the case in the Eastern United States, where many groups such as the Lumbee, though they have fought steadfastly to maintain their Indian identity, are not considered Indian for some purposes, especially for certain programs of the Bureau of Indian Affairs.

This same point was most recently expressed by the U.S. Supreme Court when it termed the employment preference for qualified Indians in the Bureau of Indian Affairs as "political rather than racial in nature." That was the *Morton* v. *Mancari* case.

The bill, as described in the committee print, will continue to promote the widespread misconception that, unless an Indian carries an official Government card issued by the Bureau of Indian Affairs, that he is not a real Indian. Though it may be inequitable and unfortunate, the hard fact remains that Indian people must conform to at least certain criteria created by non-Indians in order to be treated as Indian by the dominant culture.

With this legislation, let us begin to put to rest the necessity of many Indian people expending precious energies in pointless battles defending their identity from the ignorant multitudes who would see as "Indian" only those of our people who meet either the ridiculous standard of Hollywood or the equally mindless criteria promulgated by such as the Bureau of Indian Affairs.

The following amendments are proposed in order to clarify the intent of the legislation.

In the title of the bill, I would insert the following phrase at the end:

> In its decision to acknowledge the existence of certain Indian tribes for the purpose of providing services from said department to the groups so acknowledged.

This clearly establishes that this legislation is intended to deal with those services provided by the Bureau and not services provided by other Federal agencies such as HEW.

I have a series of amendments which will clarify that intent on the part of the Congress. In several sections, for example, I replace the term "Federal Government" with the term "Department of the Interior."

Finally, in order to make this crystal clear, I added a new section 2(a)5 to read as follows:

> The failure of any petitioning tribal group to have its existence acknowledged by the Department of the Interior, pursuant to the provisions of this act, should

not be construed by any other Federal agency or department as ineligibility for the special Indian services or benefits provided otherwise qualified Indians by such agency.

Then I was concerned also in section 5, where we deal specifically with the kind of evidence to be considered by the Secretary in dealing with a petitioning group. Under 5(a)1(g) it seems to give the Secretary unbridled discretion to consider certain types of evidence that he may deem relevant and, at the same time, exclude evidence offered by a petitioning group that he would consider irrelevant. I would add a proviso to clarify that he does not have lawmaking authority and that this is subject to judicial review:

Provided, however, That the decision of the Secretary to include any evidence offered by the Department of the Interior, or to exclude any evidence offered by a petitioning tribal group, shall be reviewable as provided in this act with the burden of proof being on the United States to establish the relevancy or irrelevancy of any evidence so included or so excluded.

Here, I think, I would go further to say that I support the burden of proof being placed in every instance on the Department of Interior. I would analogize with the Voting Rights Act as applied to the Southern States and now across the country.

I would make one short amendment to factor 2 under section 5(a). The amendment would read as follows:

The group exhibits evidence of a longstanding tribal political authority or other influence over the members of the group or possesses a longstanding relationship with the United States or particular States based upon a government's acknowledgment of the Indian group's separate or distinct status. The evidence of such political authority or other influence may be demonstrated by a showing that the group has had a tribal council or other structure or method which the group has used as its own form of government or as a means of making group decisions or to determine its membership; furthermore, such evidence shall include traditional social mechanisms or political structures or organizations unique to the group.

Heretofore, petitioning groups have been unable to meet a similar requirement of the Bureau of Indian Affairs since the Bureau required the group to have a formal governmental structure patterned after that of the United States; however, if is contended that the only way any Indian tribe, acknowledged or unacknowledged, could meet the criteria contained in the original version of the bill would be for the group to have been heretofore "federally recognized." Nevertheless such governmental structures, if they exist at all, were imposed upon such groups by the United States.

As said by Frederick Turner:

Not surprisingly, when whites encountered the natives, they dealt with them almost exclusively on a political basis, for the more significant ties that bound these groups together were largely invisible to alien eyes. In order to do so, they often tried to violate the existing structures and supplant them with ones of their own making, complete with puppet "kings." This implied definition of a tribe as a political entity persists into the present day. The less tangible ties that still may bind continue to seem largely invisible to white eyes. Before the coming of the whites, there was, of course, no such question, for the existence of a tribe rested on the simple principle of self-recognition. If a group of people recognized itself as a distinct people and behaved in concerted fashion, this obligated neighboring groups to treat it as such. A tribe was a group of people knit together by an internally recognized system of kinship, by language, spiritual concepts, and customs arising from these.

Vine Deloria went into the point further in the best-seller, "God Is Red":

With the defeat and reduction of the tribe to suppliants for the Nation's charity, a major change occurs so that, if one speaks of the tribe at all, it must thereafter be of a people who had been shattered by forces so powerful as virtually to wipe them from the face of the Earth.

The impasse seems to be constant. Indians are unable to get non-Indians to accept them as contemporary beings. Non-Indians either cannot or will not respond to the problems of contemporary Indians. They insist on remaining in the last century with old Chief Red Fox, whoever he may really be, reciting a past that is basically mythological, thrilling, and comforting.

There is one final amendment in the way of procedures. As the bill now stands, if you read factors 6 and 7 under section 5, the group is prima facie entitled to Federal acknowledgment. Yet, factors 1 and 2 seem to be listed as mandatory; of course, with the meeting of one additional factor.

Theoretically a question would arise: What would happen if a group would meet either factor 6 or 7 but would perhaps not meet factor 1 or 2? In order to deal with this problem, I propose that factors 6 and 7 be placed in a new section 5(b) to read essentially as follows:

Notwithstanding any of the above factors, satisfaction of either of the two factors immediately below shall be prima facie evidence of entitlement of Federal acknowledgment:

Then I have simply factors 6 and 7 restated.

In conclusion, I would like to say that the amendments as suggested would serve merely to clarify the basic purpose of the act and to prevent the Secretary of the Interior from the denying of a petition of an otherwise qualified bona fide Indian tribe simply because the tribe does not have a formal governmental structure modeled after that of the United States.

These amendments are offered in the hope that the U.S. Congress will finally come to grips with the longstanding problems caused by the illogical policies of the Department of the Interior in the recognition area.

Thank you very much.

Ms. BERGER. Thank you very much, Mr. Brooks. Your prepared material will become a part of the record.

[The prepared material submitted by Mr. Brooks follows:]

COMMENTS AND PROPOSED AMENDMENTS TO SENATE BILL 2375
AS DESCRIBED IN THE COMMITTEE PRINT DATED JANUARY 26, 1978

It is important at the outset that we establish just what we are, and are not, talking about. Fundamental to our prupose is an understanding of how the term "Indian" may, when used in different contexts, have several meanings. This point is best illustrated by Felix S. Cohen:

> The term "Indian" may be used in an ethnological or in a legal sense. Ethnologically, the Indian race may be distinguished from the Caucasian, Negro, Mongolian, and other races. If a person is three-fourths Caucasian and one-fourth Indian, it is absurb, from the ethnological standpoint, to assign him to the Indian race. Yet legally such a person may be an Indian. F.S. Cohen, Handbook of Federal Indian Law 2 (University of New Mexico reprint of the original edition.

Left unsaid by Cohen, but equally true, is the fact that an individual may be a racially pure Indian, and yet legally not be an "Indian" for purposes of some federal programs. Such is especially the case in the Eastern United States, where many groups, such as the Lumbee, though they have fought steadfastly to maintain their Indian identity, are not considered "Indian" for some purposes, especially for certain programs of the Bureau of Indian Affairs.

This same point was most recently expressed by the United States Supreme Court when it termed the employment preference for qualified Indians in the Bureau of Indian Affairs as "political rather than racial in nature." Morton v. Mancari, 417 U.S. 535 at n. 24, 94 S. Ct. 2474 at n. 24 (1974).

The bill, as described, will continue to promote the widespread misconception that unless an Indian carries an "official" government card issued by the Bureau of Indian Affairs that he is not a "real" Indian. Though it may be inequitable and unfortunate, the hard fact remains that Indian people must conform to at least certain criteria created by non-Indians in order to be treated as "Indian" by the dominate culture. With this legislation, let us begin to put to rest the necessity of many Indian people expending precious energies in pointless battles defending their ident-

ity against the ignorant multitudes who would see as "Indian" only those of Our People who meet either the ridiculous standard of Hollywood or the equally mindless criteria promulgated by such as the Bureau of Indian Affairs.

The following amendments are proposed in order to clarify the intent of the legislation, i.e. to establish an administrative procedure and guidelines to be followed by the Department of the Interior in its decision to acknowledge the existence of certain Indian tribes for the purpose of providing services from said Department to the groups so acknowledged. This basic purpose should be clearly spelled out by so amending the title of the bill.

Sec. 2. (a)(1) should be amended by replacing the word "including" with the word "especially" in order to make the paragraph adhere more to the expressed purpose of the legislation. The focus should rightly be on the Federal-Indian trust responsibility.

Sec. 2. (a) (2) should be amended to read as follows:

> Failure on the part of the United States to so acknowledge the existence of certain Indian tribes has created confusion regarding eligibility for certain governmental services, such uncertainty leaving many tribes otherwise eligible without adequate governmental assistance.

As amended, the paragraph recognizes the fact that an Indian tribe may have a federal relationship without being acknowledged by the Department of the Interior.

For the same reason, Sec. 2. (a) (3) should be amended as follows:

> In order to equitably determine which Indian tribal groups are entitled to have their existence acknowledged by the Department of the Interior, an administrative procedure and policy guidelines to be followed by said Department in its decision to so acknowledge the existence of certain of certain Indian tribes must be established. This acknowledgment must continue to be premised upon the establishment of a government-to-government relationship with federally acknowledged Indian tribes.

The terms "United States" and "acknowledged" in Sec. 2. (a) (3) should be replaced by "Department of the Interior" and "so acknowledged" respectively so as

to bring this paragraph into compliance with the basic purpose of the legislation.

In order to make it clear that the Act deals only with the services provided to federally acknowledged Indian groups through the Department of the Interior, a new paragraph Sec. 2.(a) (5) should be inserted in the bill. The new paragraph would read as follows:

> The failure of any petitioning tribal group to have its existence acknowledged by the Department of the Interior, pursuant to the provisions of this Act, should not be construed by any other federal agency as ineligibility for the special Indian services or benefits provided otherwise qualified groups by such agency.

Sec. 4.(b) (1) should be amended by replacing the term "Federal Government" by the "Department of the Interior" for the same reason.

Sec. 4.(f) should be amended by inserting the phrase "adverse to the petitioning group" after the word "decision" for obvious reasons.

Sec. 5.(a) (1) (g) should be amended by the addition of the following language:

> ; provided, however, the decision of the Secretary to include any evidence offered by the Department of the Interior, or to exclude any evidence offered by a petitioning tribal group, shall be reviewable as provided in this Act with the burden of proof being on the United States to establish the relevancy or irrelevancy of any evidence so included or so excluded.

This language is intended to make it clear that the decision of the Secretary to include evidence offered by the Office, or to exclude evidence offered by the petitioning group, is not a discretionary one. This seems only fair given the past

policies of the Department of Interior with regard to the extending of recognition to petitioning Indian tribes.

In order to eliminate the "Catch-22" policies of the Department of the Interior, factor (2) under Sec. 5.(a) should be rewritten to read as follows:

> The group exhibits evidence of a longstanding tribal political authority or other influence over the members of the group or possesses a longstanding relationship with the United States or particular States based upon a government's acknowledgment of the Indian group's separate or distinct status. The evidence of such political authority or other influence may be demonstrated by a showing that the group has had a tribal council or other structure or method which the group has used as its own form of government or as a means of making group decisions or to determine its membership; furthermore, such evidence shall include traditional social mechanisms or political structures or organizations unique to the group.

Heretofore, petitioning groups have been unable to meet a similar requirement of the Bureau of Indian Affairs since the Bureau required the group to have a formal governmental structure patterned after that of the United States; however, it is contended that the only way any Indian tribe, acknowledged or unacknowledged, could meet the criteria contained in the original version of the bill would be for the group to have been heretofore "federally recognized". Nevertheless such governmental structures, if they exist at all, were imposed upon such groups by the United States. As said by Frederick Turner in the New York Times article (date unknown) What Means "Tribe", White Man?:

> Not surprisingly, when whites encountered the natives they dealt with them almost exclusively on a political basis, for the more significant ties that bound these groups together were largely invisible to alien eyes. *** In order to do so they often tried to violate the existing structures and supplant them with ones of their own making, complete with puppet "kings." *** This implied definition of a tribe as a political entity persists into the present day. *** The less tangible ties that still may bind continue to seem largely invisible to white eyes. *** Before the coming of the whites there was, of course, no such question, for the existence of a tribe rested on the simple principle of self-recognition. If a group of people recognized itself as a distinct people and behaved in

> concerted fashion this obligated neighboring groups to treat it as such. *** A tribe was a group of people knit together by an internally recognized system of kinship, by language, spiritual concepts, and customs arising from these. *** Dr. Swanton treats associated bands as functioning tribal units even if they never had an overarching political organization.

One can hardly expect Indian tribes to have retained intact their traditional social and political structures before the onslaught of European conquest. The point is best made by Vine Deloria, Jr., in the best-seller, God Is Red:

> With the defeat and reduction of the tribe to suppliance for the nation's charity, a major change occurs so that if one speaks of the tribe at all it must thereafter be of a people who had been shattered by forces so powerful as virtually to wipe them from the face of the earth. (p.53)

> The impasse seems to be constant. Indians are unable to get non-Indians to accept them as contemporary beings. Non-Indians either cannot or will not respond to the problems of contemporary Indians. They insist on remaining in the last century with old Chief Red Fox, whoever he may really be, reciting a past that is basically mythological, thrilling, and conforting. (p.56)

As the bill now stands, the legal position of a petitioning group meeting either of factors (6) or (7) under Sec. 5.(a) is unclear; satisfaction of either factor is "prima facie evidence of entitlement to Federal acknowledgment," although Sec. 5.(a) requires the meeting of "factors (1) and (2) and at least one additional factor." It would seem that if Congress or the President should recognize a group as Indian, that should, in fact, create the presumption of entitlement to services. Therefore, factors (6) and (7) should be deleted from Sec. 5.(a) and new Sec. 5.(b) should be inserted to read as follows:

> Notwithstanding any of the above factors, satisfaction of either of the two factors immediately below shall be prima facie evidence of entitlement to Federal acknowledgment:
>
> (1) the group has had treaty relations with the United States, particular States, or preexisting colonial or territorial governments. "Treaty relations" shall include any formal relationship based on a government's acknowledgment of the Indian group's separate or distinct status.

(2) the group has been identified or referred to as an Indian tribe or designated as Indian by an Act of Congress or Executive order which may have provided for, or otherwise affected or identified the rights, governmental structure, jurisdiction, or property of the tribal group.

In conclusion, the amendments suggested above would serve merely to clarify the basic purpose of the Act and to prevent the Secretary from denying the petition of an otherwise qualified bona fide Indian tribe simply because the tribe does not have a formal governmental structure modeled after that of the United States. It is offered in the hope that the United States Congress will finally come to grips with the longstanding problems caused by the illogical policies of the Department of the Interior in the recognition area.

Respectfully Submitted,

Adolph L. Dial
Former Member of the American Indian
Policy Review Commission
Chairman, Department of American Indian
Studies of Pembroke State University

Dexter Brooks
Locklear, Brooks & Jacobs
Attorneys at Law

Ms. BERGER. The next witness will be Mr. George Tomer.

STATEMENT OF GEORGE TOMER, TRIBAL PLANNER, PENOBSCOT REGIONAL COUNCIL

Mr. TOMER. First I would like to say that I will submit to the committee at a later date full written testimony. At this time I will make a summary statement.

I am George Tomer. I am a tribal member of the Penobscot Nation of Maine. Currently we are federally recognized along with the Passamaquoddy Tribe. Previously I served with the American Indian Policy Review Commission as task force specialist with the task force on terminated and nonfederally recognized tribes.

To be very direct, the bill S. 2375 is a policy statement and an implementation plan. As a policy statement, it is fully acceptable. However, as a means of implementation, I believe it is a clumsy instrument.

In regard to the jurisdiction, appropriation of services, and protections for currently nonfederally recognized tribes to the status of Federal recognition, I believe it requires further coordination and consideration by the Committee on Governmental Affairs and possibly GAO.

In regard to the jurisdiction of nonfederally recognized tribes to tribal status, I would submit also that it require that the Department of Justice negotiate jurisdictional problems.

In terms of what is happening with S. 2375, I would say that tribes throughout this country are in a very critical period. I would say that in terms of overall reorganization of the BIA and overall Federal agency contact with Indian tribes, that we, as Indian tribes, do require further contact and consultation in terms of overall reorganization. It is not only HEW or BIA or any other Federal agency. This is necessary to formulate a true Federal-Indian relationship.

This has been deteriorating. I would hope that perhaps in the next Congress that we approach very directly the question of the Federal-Indian trust relationship and a policy statement by Congress and not to deny it.

Thank you.

Ms. BERGER. Thank you.

[Subsequent to the hearing the following material was received:]

FEDERAL REGIONAL COUNCIL OF NEW ENGLAND

Room E-431
John F. Kennedy Fed. Bldg.
Boston, Mass. 02203
(617) 223-5421

April 26, 1978

Honorable James Abourezk, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Abourezk,

I wish to thank you for the invitation to testify before the Senate Select Committee on Indian Affairs concerning S.2375, commonly referred to as the tribal recognition bill. I am appreciative that it was possible for two New England Indian people, knowledgeable in this field, to testify in my stead. I would, however, like to take this opportunity to submit written testimony for the record.

The issue of tribal recognition has been a major concern of the Federal Regional Council in New England ever since it established an Indian Task Force in 1971. In 1973 the FRC/ITF issued a Recognition Position Paper which was subsequently endorsed by the FRC and forwarded to the Under-secretaries Group for Regional Operations for further consideration (copies of relevant documents are attached). No action was taken on it, however. In 1976 the FRC/ITF worked closely with the American Indian Policy Review Commission to arrange a Task Force hearing in Boston held jointly with the Northeast Regional Office of the United States Commission on Civil Rights. The FRC/ITF contributed to the Task Force X Report and to a forthcoming USCCR report also partly based upon the 1976 hearing.

The FRC and the Indian Task Force have closely followed the development of the issue of recognition in the contexts of proposed legislation and regulations and of recent litigation including the Passamaquoddy and Mashpee cases. In the first of these cases, the ITF pursued the extension of Bureau of Indian Affairs and Indian Health Services to the Maine Tribes after their district and appelate court victories. In the Mashpee case, the Council has attempted to play an ameliorative role, as requested by Senators Brooke and Kennedy and Congressman Studds, to find means by which Federal programs might be used to lessen the impact of the Mashpee claims. At the same time, the Council has worked with the Mashpee Indians and similar tribes to make available Federal Indian programs which may be provided to them independent of their formal recognition as tribes by the Department of the Interior.

There continues to be a considerable consensus among New England Indian communities, non-recognized tribes, and Federal officials that a rational procedure must be established to extend Federal recognition or acknowledgement to legitimate non-recognized tribal groups and that such a procedure must bear heavily on the historic evolution of the groups to be recognized. The Northeastern delegation, attending the NCAI Nashville conference, strongly supported the NCAI Declaration of Principles on Tribal Recognition.

In preparation for the Nashville conference, the Connecticut Indian consortium, American Indians for Development, sponsored a Northeastern Conference on Recognition, held in Meriden, Connecticut. Representatives from about 15 Northeastern Algonkian tribes from New England, Long Island and Delaware attended. The conferees reviewed both S.2375 and the proposed BIA regulations. In general the conference far preferred the approach taken in S.2375 and proposed numerous amendments to the BIA regulations to bring them into line with your recognition bill. Two major amendments were proposed to S.2375 however.

First, Section 5(a)(1) which calls for identification as Indian by governmental authorities, public documents or scholars over a protracted period was recommended for deletion for the following reasons: (1) there may be legitimate tribal groups who have been consistently ignored by non-Indian media and authorities; (2) such identification is not necessarily knowledgeable or informed; (3) identification by other acknowledged Indian groups seems preferable. Second, a Section 5(c) was recommended to provide for an Indian Advisory Council made up of a representative group of Native Americans, selected on a regional basis from tribal nominees in each of the 10 Federal regions. Copies of both S.2375 and the BIA regulations with changes proposed at the Meriden Conference on Tribal Recognition are attached.

Although there was considerable support at the Meriden conference for the approach of S.2375, there was not a consensus on the necessity or desirability of a legislative strategy to resolve the recognition issue. There was some hopefulness, inspired by the December draft of the BIA regulations as well as progress toward settlement of the Narragansett land claims, that the issue of recognition could be resolved administratively. There was a concommittant conviction that the Federal government already has a sufficient mandate to recognize all legitimate tribes. Some tribal leaders are concerned that legislation might be amended to restrict tribes from exercising their legal rights or to define tribal existence so narrowly as not only to exclude currently non-recognized tribes but possibly to terminate already recognized tribes. On the one hand, tribes are concerned that an opportunity for the passage of constructive legislation might be lost if they do not support S.2375.

On the other hand, they see their struggle for Federal acknowledgement to be a long term effort, not necessarily dependent upon immediate congressional action.

The Indian Task Force would like to take this opportunity to commend you for the development of S.2375 as well as other significant reform legislation. We have followed with particular interest the development of S.1214, the Indian Child Welfare Act, which is nearing action by the House Interior Committee. We understand that the House Indian Affairs Subcommittee has approved language broadening the definition of Indian, outside the context of tribal jurisdiction, in line with the Indian Healthcare Improvement Act. This change suggests an interim approach to the recognition issue from the standpoint of some services, if not trust protection and jurisdiction, until the nature of tribal existence is resolved. The President's reorganization process provides a similar avenue for reform. As service programs are consolidated, it is possible that administrative restrictions on service populations placed on programs under the Snyder Act or Johnson-O'Malley Act will give way to the broader legislative mandate provided in that legislation and later specified in such Acts as the Indian Education Act, the Housing and Community Development Act and others. For this process to be seen as legitimate in the Indian communities, as well as for obvious reasons of efficiency, it is crucial that Native Americans of every status and region be deeply involved in this effort.

I am certain that other testimony will be submitted from this region which will elaborate on these points, as well as pursue different perspectives. If you require any further information, please do not hesitate to contact me. With warmest regards, I am

Sincerely,

Gregory P. Buesing, Coordinator
Indian Task Force

cc: Ivan R. Ashley, Chairperson,FRC
Terry Polchies, FRC/ITF Indian Co-Chairman
Edward Bernard, FRC/ITF Federal Co-Chairman
Lawrence Kelly, FRC Staff Director
Robert Newall
Eric Thomas
George Tomer

Tribes and Organizations at Northeast Conference
on Tribal Recognition

March 17, 1978

CONNECTICUT

Western Pequot
Eastern Pequot
Schagticoke
Mohegan
Golden Hill
American Indians for Development

DELAWARE

Pisataway-Conoy Tribe

MAINE

Passamaquoddy
Penobscot
Association of Aroostook Indians (Maliseet and Micmac)
Central Maine Indian Association

MASSACHUSETTS

Mashpee
Gay Head
Nipmuc
Boston Indian Council

NEW YORK

Shinnecock
Poospatuck

PENNSYLVANIA

American Indians of the Delaware Valley

RHODE ISLAND

Narragansett

VERMONT

Abenaki

Ms. BERGER. Next we will hear from Mr. Eric Thomas.

STATEMENT OF ERIC THOMAS, TRIBAL COORDINATOR, NARRAGANSETT REGIONAL COUNCIL, CHARLESTON, R.I.

Mr. THOMAS. Good morning, Senator. I am Eric Thomas/Sekatau of the Narragansett Tribe of Rhode Island. I am here to speak on behalf of the East Coast Region I, nonfederally recognized native American Indians.

Some of our concerns are that all tribes be heard, that the Government is trying to obtain just one policy to cover all the Indians, that in a country that sends billions to other countries they are using the ploy that there is no money. If the bill is readdressed to nonfederally recognized tribes and federally recognized tribes input, then it will turn into an instrument of all tribes.

Thank you.

Chairman ABOUREZK. Thank you.

Without objection, your written statement will be inserted.

[The prepared statement of Mr. Thomas follows:]

Good morning Senator: I am Eric Thomas/Sekatau of the Narragansett Indian Tribe of Rhode Island. I am here in the Nation's capital to speak on behalf of all the east coast, region I, non-federally recognized native American Indians.

In the time alloted to me—I am here to give our statement in relation to our status and plight that covers over three hundred years history. To many of you, our history is unfamiliar, because you too have been brain-washed to believe we no longer exist. But we still live.

Have we not suffered with humility the numerous atrocities inflicted upon us because we were here before the United States was the United States? A Government which patterned itself after the Iroquois Nation's Confederacy. Have not our women mourned the passing of many brave warriors in numerous battles? Have not many of our elders and children been hunted down and brutally slain because we were called savages? But who were the real savages to do these horrible deeds?

Other than our location—being located in the East—there has been no difference. We have maintained our tradition, our culture, our language, our songs, and our religion. But unlike many we have held fast to our original lands and because of this we have been labeled a label that many of you are now here to question: That of the non-Federally recognized native American Indian. Do you know what a non-Federally recognized native American is? He is one who does not have a treaty with United States Government. . . . But how could we . . . the United States Government was not in existence and until then the only type of government was that of the Original Thirteen Colonies . . . so was the plight of the native American Indians in those areas and because of this we were forced to deal with them. Our status is no different than many other native American Indians throughout the United States—on the West Coast, in the South, and in the North.

In a country that sends billions of dollars to other countries, you would have many of our native American Indians believing that if we obtain our recognition there will be less monies for those who are now receiving it. Who started this lie? And why is it constantly being used as an excuse to not recognize us? Many of you believe that other Indians would be receiving less monies than they are now receiving, and that is not true . . . using the same old ploy of divide and conquer. In essence, as our forefathers have told us in many of our legends. . . . Envision each tribe as an arrow, with it's meaning and power, it can be a beautiful thing because of the skillful maker's hands and infinite wisdom. It can fly straight and true. It can be used as a weapon to strike at the heart of an enemy. Man can take one arrow and break it like a twig but if there are many arrows bound together they cannot be broken.

I am here to let you know that I do not want the United States Government to break their basic trust relationships with other tribes. But I do want them to recognize they also have a responsibility to us.

I don't pretend to know all of the functions of a Congressional hearing, but I do know it will have significant implications for the future of our people. Today

they have put our future in your hands. Tomorrow your future may be dependent on us. Your concerns may be limited to today, but what about tomorrow? You must remember that we are all Indians regardless of the label (Federal or non-Federally recognized). Remember that when your forefathers first came here they did not all agree nor did they all get along well together, but they joined together to take our Indian lands and now we must stand together as American Indians.

Today I speak of tomorrow for my people . . . my brothers, I now ask for you to consider our present status.

As a member of the Narragansett Indian Tribe who has been pursuing the return of our ancestral lands, we the Narragansetts filed our claim in the United States district court more than three years ago. We were one of the first Northeast Indian land claims actually filed and we were a model for every claim that followed. The language of the suit and the legal arguments upon which it was based set a precedent . . . now we await the final ruling by the Department of the Interior and Congress. We ask your support and for you to join with us to insure and to protect our future and the future of all American Indians as we have supported the Menominee and the Siletz in their bid for restoration. If we were to establish any policy here today we would ask that all Indians be given an opportunity to be heard.

I know that the Government is trying to obtain just one policy to cover all Indians but does there exist just one law that covers all peoples? Before you come up with any over-all policy, think also of how it will be applied to you—beacuse as we are now judged so may you be judged tomorrow.

As one of our wise elders told not too long ago: "There are many trails in a forest, some are made by animals, others made by man. Those made by animals lead to food, water, or shelter and those made by man often go in circles."

Now I ask you, how many times have the laws been changed to suit the Government? How many treaties have been broken? How many days are celebrated for those who were killed in battle . . . but how many holidays are given to us to mourn our Indian brothers who fought for their people?

Today we stand at the crossroads, our future is in your hands. Which way do you lead us?

I, Eric Thomas/Sekatau of the Narragansett Indians have spoken. Thank you.

ERIC THOMAS,
Tribal Coordinator, Narragansett Tribe.

STATEMENT OF RAYMOND GIBBS, ATTORNEY, REPRESENTING THE TUSCARORA OF ROBESON COUNTY, N.C.

Mr. GIBBS. Mr. Chairman, I am Raymond Gibbs, a lawyer from Tennessee. I represent the Tuscarora of Robeson County, N.C. They asked me to come here and to address this committee.

Senator Abourezk, I appear before you in a posture of appreciation. I want you to know that we consider you our spokesperson as we watch you and we listen to you and as we read about you and as we keep up with what you do and your work.

We offer our support for your bill. There are only two things in the bill that I want to address. That is the critical problem of land. It may be that that is too big of a problem for you to consider. But land is the ultimate goal because, without land, recognition is almost exchanging one welfare system for another welfare system. And we do not want that. We want our identity, and we want land.

The other problem that I do not think the bill deals with is the problem of paying for the historical research that must be done by each tribe. That is a critical element in the American movement today. There are not enough Alex Haleys; we do not know our roots, and we want our roots. It takes scholarship and it takes money to find your roots. The BIA does not have Alex Haleys. The BIA does not have the in-house expertise or the know-how to research and find the roots of the American native Indians.

What I would propose for this bill would be that the U.S. Government would contract with the petitioning tribes and be able to pay for private anthropologists, private historians, men and women of national reputation.

It is not going to do any good to turn loose the BIA with its many bureaucrats searching for the historical roots of the American Indian. They have not found them yet, and they are not going to ever find them.

People in the BIA do not have the credentials that people in the private sector of America have to find them. You give us some money, and we will find our roots. We have got the lawyers. We have got the historians on the sidelines. The anthropologists and the private academic sector of this country is willing and waiting. We just do not have the money to pay them. The BIA cannot give us our roots.

Let me say something else. We are paying out of our own pockets private citizens for our history. It is costing us dearly. Our people are uneducated. Our people are poor people. We want those who can read and write in American to read and write for us. We want those in America who have money to help spend some money on us. This country can build a neutron bomb. If we can go to the moon, we can find native American roots.

The situation in America with American Indians today is apartheid. Andy Young doesn't have to go to Africa to find apartheid; he can come to Robeson County, North Carolina. Jimmy Carter talks about human rights. We are talking about aboriginal rights. Human rights start at home. Jimmy Carter can come to Robeson County, North Carolina, if he wants to talk about human rights. He doesn't have to go the South America.

One thing I would ask this committee to do, along with the Senators who sit on it—because they have the political clout—is this: In the name of good reason and in the name of good politics, tell the White House to have a White House Indian adviser. Ford and Nixon did that much.

I, as a country lawyer from Tennessee, came to Washington last year and knocked on the doors of the White House and said, "Where is the Indian adviser? I want to talk to him and I want to talk about Robeson County, N.C." They said, "We don't have one." They referred me to someone silly over the phone who did not know what the problems were.

Again, I offer my support. I offer my appreciation. There are three critical areas: Land, which is the jugular vein; historical research and roots—and do it with private researchers and historians and scholars, the BIA does not have the in-house competence to do it—third, get somebody over there at the White House.

Tell Jimmy Carter we are talking about aboriginal rights and human rights. Tell Andy Young that America has its own apartheid. He can come to Robeson in North Carolina.

Thank you.

Mr. PARKER. I have one question for Mr. Brooks. In your statement, you make the point that the purpose of the legislation, as you interpret it, is to provide authority for the Interior Department to make a determination on the eligibility of petitioning tribes, but that such a determination should not affect the other departments in

the Government and their relation with any particular group. Is that what your recommendation is?

Mr. BROOKS. That is essentially correct. In other words, if HEW, under some Federal statute, is administering particular kinds of Indian programs to perhaps State-recognized Indians, if this particular group were to petition under this mechanism and perhaps not meet a factor or two, then they should still be entitled to those HEW moneys.

Mr. PARKER. I am not quite clear of your position yet.

Mr. BROOKS. I am saying that these are regulations designed for the Department of the Interior to recognize groups for their own services, their own programs. They are not binding on HEW to administer Indian education moneys and the like.

It would be possible to meet HEW criteria and not meet these criteria. That is the theoretical concept.

Mr. PARKER. I have no other questions of the witnesses. The chairman was called out.

Would any other witnesses have any other remarks they would want to make for the record?

The record on this hearing will be open. The committee's procedure normally is to keep the record open for a period of 2 weeks from the date of the hearing.

Mr. BROOKS. I have one closing comment. I would like to express appreciation to the committee staff for their genuine concern about the rights of all Indian people of the United States of America. Thank you very much.

Mr. PARKER. I thank all the witnesses for their testimony.

We will now adjourn, subject to the call of the Chair.

[Whereupon, at 11:25 a.m., the committee adjourned, subject to the call of the Chair.]

[Subsequent to the hearing the following material was received:]

CAMERA COPY—PLEASE SHOOT
(Hold Page Numbers Thereon)

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 8 1978

Honorable James Abourezk
Chairman, Select Committee
on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request of February 8, 1978, for the views of this Office on S. 2375, a bill "To establish an administrative procedure and guidelines to be followed by the Department of the Interior in its decision to acknowledge the existence of certain Indian tribes."

In testimony before your Committee on April 18, 1978, the Department of the Interior explained its reasons for recommending against favorable action on the bill. We concur in the views expressed in the Department of the Interior testimony and, accordingly, recommend against the enactment of S. 2375.

Sincerely,

Naomi R Sweeney

Naomi R. Sweeney
Acting Assistant Director for
Legislative Reference

Hoopa Valley Business Council
HOOPA VALLEY TRIBE
Regular Meetings on the First and Third Thursdays of Each Month
P. O. Box 817 HOOPA, CALIFORNIA 95546 Phone 625-4971

RECEIVED
MAY 8 1978

April 28, 1978

APR 3 1978

The Honorable James D. Abourezk
Chairman Senate Committee on Indian Affairs
Room 5331
Washington, D. C. 20510

Re: Legislation on Federal Recognition (S. 2375)

Dear Senator Abourezk,

We wish to express our concern regarding S. 2375 which is now pending before the Senate Select Committee on Indian Affairs. As we understand it, this bill would establish procedures and guidelines for Federal recognition of unrecognized Indian Tribes and groups.

It is the position of the Hoopa Valley Tribe that any legislation that would increase the number of Indian Tribes and groups eligible to receive federal funds must provide additional funds for the federal services that are received.

The bills presently under consideration by your committee on this subject should be amended to provide that a separate budget be developed for those tribes or groups who receive recognition after the passage of S. 2375. Any legislation that would further reduce funds now appropriated for Indian Tribes without provisions for additional funds is opposed by the Hoopa Valley Tribe.

We ask that this letter be inserted into the record of the S. 2375 hearings.

Sincerely,

Peter Masten Jr., Chairman
Hoopa Valley Business Council

COMMENTS OF THE LITTLE SHELL TRIBE OF CHIPPEWA INDIANS
OF MONTANA

Comments upon proposed procedures and guidelines to be followed by the Department of the Interior in its decision to acknowledge the existence of certain Indian tribes as found in Senate Bill 2375.

I
GENERAL STATEMENT

The Little Shell Tribe of Chippewa Indians of Montana is an historical Indian group which are descendents of the Plains Ojibway. The tribe has consistently exercised the powers of an independent sovereign nation within the United States.

The Little Shell Tribe of Chippewa Indians of Montana is in general agreement with Senate Bill 2375, which Mr. Abourezk has introduced, and hereby presents its comments upon the bill.

II
ANALYSIS BY SECTION

Section I
No comment

Section II
No comment

Section III
No comment

Section IV
Page 5, Paragraph d, sentence 2

Sentence two reads: "Upon receipt of this report the group shall have six months to respond, including an opportunity to present oral argument to rebut the evidence relied upon."

Sentence two should read: "Upon receipt of this report, the group shall have twelve months to respond, including an opportunity to present oral argument to rebut the evidence relied upon."

Page 7, Paragraph h, sentence 3

Sentence three reads: "At the request of the tribe, the Office shall provide technical assistance for the development of a membership roll."

The Little Shell Tribe of Chippewa Indians of Montana feels that funds should be included as part of the definition of technical assistance for the development of the membership roll.

II
Continued

Section V
No Comment

Section VI
No Comment

Section VII
No Comment

III
CONCLUSION

The Little Shell Tribe of Chippewa Indians of Montana is in general agreement with Senate Bill 2375, with the exceptions as delineated, and request the Senate Select Committee on Senate Affairs to record our recommendations in support of Senate Bill 2375.

Little Shell Tribe of Chippewa Indians of Montana

George Plummer, Chairman
Star Rt., P.O. Box 21, Dodson, Mt. 59524

RECEIVED
MAY 8 1978

Little Shell Tribe of Chippewa
Indians of Montana
201 Power Block
P.O. Box 314
Helena, MT 59601

April 26, 1978

Select Committee on Indian Affairs
United States Senate
Washington, D.C.

RE: S. 2375, A bill to establish a procedure for the acknowledgement of the existence of Indian tribes

Dear Senators:

I am writing on behalf of the Little Shell Tribe of Chippewa Indians of Montana in support of S. 2375. We are in favor of the bill because our group has for many years sought formal "recognition" by the Bureau of Indian Affairs and the United States Government, and has for many years sought to protect the interest of its members by seeking the benefits of programs generally available to Indians.

Our attempts to obtain recognition have been continually frustrated by the lack of any guidelines for recognition and the unavailability of a responsive federal body charged with the specific task of dealing with our problems.

In addition we have faced the frustration of trying to find our own resources to assemble the documentation necessary to convince the United States of our tribal existence.

We give general support for S. 2375 because it addresses our needs in terms of a responsible branch of government and a fixed procedure as well as our need for assistance in proving our case. We particularly support the flexible standards for recognition contained in the bill.

Our major criticism of the bill is that the time limits should be more flexible.

Your consideration of our comments is appreciated.

Respectfully,

John Sinclair,
Vice-President

JOHN MELCHER, O. MONT., CHAIRMAN
RICHARD B. RUTTENBERG, OHIO HENRY F. BARTLETT, OKLA.
JOHN MELCHER, IDAHO MARK O. HATFIELD, OREG.
ALAN G. PHILLIPS, STAFF DIRECTOR

United States Senate

SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, D.C. 20510

The following tribes, tribal officers, or organizations submitted a statement and covering letter identical to that submitted by the Northwest Florida Creek Tribe which appears after this listing.

Joseph Pierte, Jr., Chairman
Tunica - Biloxi Tribe
Kenner, Louisiana

Choctaw - Apache of Ebarb
Raymond L. Ebarb, Administrator
Noble, Louisiana

Clifton - Choctaw Reservation, Inc.
Amos Tyler, Chairman
Mora, Louisiana

Creek Nation East of the Mississippi, Inc.,
Eddie Leon Tullis, Chairman
Atmore, Alabama

The Grand Traverse Band of
Ottawas and Chippewas
Bradley C. Duhamel, Coordinator
for recognition
Suttons Bay, Michigan

Hauma Alliance, Inc.,
Howard J. Dion, Chairman
Dulac, Louisiana

The Louisiana Band of Choctaw Indians, Inc.,
Dette Rainwater, Chairperson
Baton Rouge, Louisana

Lac Vieux Desert Indian Community
Sandra M. Garrison
Watersmeet, Michigan

The Huron Potawatomi Band of
the Potawatomi Nation
David Madston, Chairman
Fulton, Michigan

RECEIVED
MAY 8 1978

Northwest Florida Creek Indian Council
P. O. Box 462, Pensacola, Florida 32592, 904 – 432-9639

April 28, 1978

The Honorable Senator James Abourezk
Chairman, Senate Select Committee on Indian Affairs
5331 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Abourezk:

There are many Indian tribes across the United States who were not able to demonstrate their support of S. 2375, "a bill to establish an administrative procedure and guidelines to be followed by the Department of the Interior in its decision to acknowledge the existence of certain tribes," in the hearing you conducted April 18, 1978. We hope that you will therefore accept the following statement as a part of the recorded testimony to be published with the hearings on this bill.

Sincerely,

Buford L. Rolin
Chairman

STATEMENT IN
SUPPORT OF
THE AMERICAN INDIAN
TRIBAL RECOGNITION ACT

Many of us have sought federal recognition of our status as an Indian tribe steadfastly since the early 1800's. In the course of this struggle, the federal agencies responsible for the administration of Indian policy have continually neglected our rights and repeatedly ignored the pleas of our leaders. Our tribes have been forced into positions of great vulnerability. Our cultures have been suppressed, our lands have been stolen, and our tribal governments have been undermined. As an ultimate insult, federal officials have recently refused to help us saying that there is no administrative procedure for them to use in granting us the basic recognition of our rights under federal law. Your bill, S. 2375, is the most comprehensive attempt which has ever been made to correct this continuous and egregious assault on the rights of Indian tribes.

We find that the objections raised against the bill are unfounded.

The National Congress of American Indians, whose leadership opposes the bill, voted on March 29, 1978, to support 12 principles on federal-tribal recognition which are embodied in the bill. Ten of those principles are paraphrased from the Final Report of the American Indian Policy Review

Commission. Principles 7, 9, 10, and 11, in fact, contain wording from the conclusion found on page 479 of that Report.

The understandable concern of recognized tribes that their funds should not be decreased when additional tribes become recognized is certainly answered by S. 2375, section 2(A)(4) which says, "Such congressional action shall not entail a diminishment of services and assistance to those tribes whose existence is already acknowledged;" and section 4(i) which provides an additional safeguard for the financial interests of recognized tribes. No governmental action could go farther toward protecting the financial base of recognized tribes than those provisions of S. 2375 if enacted into law.

The concern expressed by NCAI's leadership that recognition of the rights of unrecognized tribes would somehow diminish the rights of recognized tribes is based on ignorance. The unrecognized tribes have endured the same assaults which all tribes have endured. In some cases, they have exercised their rights even more firmly than their recognized brothers have been able to. There are no real differences between recognized and unrecognized tribes. The only factor separating tribes is the federal government's arbitrary and inconsistent policy. NCAI pointed out this fact in their first three principles of their position on federal-tribal recognition.

There are people who express the concern that there must be rigid standards for recognizing tribes; and at the same time oppose the Senate bill. Yet there has never been a more comprehensive or detailed set of criteria than that contained in the bill. Section 5(a) lists identifying factors which can only be met by genuine Indian tribes. The bill would not allow non-Indians access to Indian money. Each group would have to meet the bill's standards in order to be recognized as an Indian tribe, so it is absurd for critics to say the bill grants "wholesale" recognition. The bill presents a clear, firm method with safeguards to consistently determine that all Indian tribes will receive the rights, protection, and services which they are justly entitled to.

Furthermore, it is important to point out that the bill would not diminish services which ANA (ONAP), CETA (DOL), HUD, and other agencies direct to Indian communities who choose not to identify themselves as tribes nor to seek federal recognition as tribes.

An additional objection, that the bill actually impedes federal efforts to recognize tribes, could not be farther from the truth. The bill primarily addresses those tribes whose struggles for recognition have been longstanding and are now well-known. We are familiar with the Catch-22 obstacles that have

always been used to frustrate the honest efforts of our leaders. Tribes without lands have been told they must have Indian land; tribes which had Indian land have been told they must have trust land; tribes with trust allotments have been told they must have tribal land. In areas where Indian governments were illegal, tribes have been told they must have exercised governmental authority. Where tribal customs and religions had been suppressed by non-Indian people, the United States has required tribes to speak their native languages and demonstrate their aboriginal ceremonies. Finally, some tribes have found that when they are officially "recognized" their rights are not fully protected. For the tribes, the struggle for recognition is like jumping through one hoop after another; and for the bureaucrats, recognition is a shell game where none of the shells contain a prize.

The Interior Department has been so negligent in its approach to this basic problem of recognition that responsibility has necessarily been placed on the Congress to press for a solution. The first action taken by the Interior Department to create administrative procedures was brought about solely by pressure from the Policy Review Commission and the development of your bill.

It is your stand which protects us from unending bureaucratic procrastination even today.

The Interior Department's Draft Regulations do not attempt to understand the situation facing unrecognized tribes nor the historical circumstances which have brought the situation into existence. Their object is simply to allow wide bureaucratic discretion and to simplify administration of Indian programs without regard to Indian rights.

You have our full support as you stand firm in the defense of our rights and as you promote S. 2375.

With kindest regards, I am,

Sincerely,

Buford L. Rolin

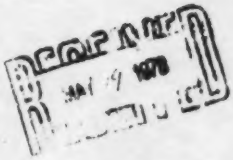
Buford L. Rolin, Chairman

Juanita S. Felter

Juanita S. Felter
Executive Director

BLR/JSF/cg

The Confederated Tribes of Grand Ronde Indians
Marv Kimsey-Tribal Council Chairman
P.O. Box 94
Grand Ronde, Oregon 97347



May 15, 1975

The Honorable James Abourzek
Room 3321 Dirksen Office Bldg.
First and Constitution Ave.
Washington, D.C. 20510

Recently, I wrote to you concerning the restoration bill you were to introduce this session. I have not seen or heard anything pertaining to this peticular bill.

I received a copy of the bill and the restoration from your office several weeks ago. I also submitted some ideas you requested. That would tailor the bill to fit some of our needs.

We are very interested in this piece of legislation. I have heard and read of the Meads and Cunningham bill to abolish all Indian Treaties.

This bill and many others drew a lot of interest during a discussion recently at an Indian Education conference. The ramifications were of concern as to what effect they would have on Indian Education.

Please send any additional developments on the restoration bill to the return address above.

Sincerely,

Marv Kimsey, Chairman
Tribal Council

ck/mk

27-213 O - 78 - 10

COWLITZ INDIAN TRIBE

[redacted]

JOSEPH E. CLOQUET
TRIBAL COUNCIL CHAIRMAN

RECEIVED
MAY 1978

May 25, 1978

The Honorable James K. Abourezk
331 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Abourezk:

Enclosed is the Resolution of the Tribal Council of the Cowlitz Indian Tribe urging support of S.2375 and asking that it be moved out of Committee. We have contacted other members of the Select Committee.

Senator, there are people like us, clear out here in the Pacific Northwest, that are saddened by the fact that you do not plan to run for the Senate again. You will be sorely missed. Who will replace you, with your true understanding of the needs of Indian people.

However, we do want you to know that we are extremely grateful for the good work you have done for the Indian population of our great country.

Very truly yours,

Joe Cloquet

Joseph E. Cloquet, Chairman
COWLITZ INDIAN TRIBE

Enclosure: 1

JEC/csw

COWLITZ INDIAN TRIBE
BOYD WILSON
TRIBAL CHAIRMAN
MARY CLOQUET
BUSINESS MANAGER

COWLITZ RESOLUTION # 33-78

WHEREAS, The Cowlitz Tribe has existed for time beyond memory and is well documented by all early historians of the Pacific Northwest; and

WHEREAS, Decades have gone by and in spite of the early promises made by the United States, and because the Cowlitz were a peaceful people who fought with the United States in the Indian Wars there seemed little reason for the government to treat with them; and

WHEREAS, The fact that the Cowlitz and many other tribes have maintained their tribal identity in spite of a lack of a land base shows an impressive determination to survive in spite of incredible hardships and forces designed to destroy them.

THEREFORE, BE IT RESOLVED, By the Cowlitz Tribal Council that; The Cowlitz Tribal Council fully endorses S.2375, for themselves, and for all other tribes that qualify and urge that the bill be moved out of Committee and through the Senate.

BE IT FURTHER RESOLVED, That the Senate Select Committee and Senators Jackson and Magnuson be notified of our Resolution.

CERTIFICATION

The foregoing Resolution was adopted at the regular meeting of the Cowlitz Tribal Council on May 20, 1978, held in Longview, Washington at which a quorum was present and passed by a vote of 17 for and 0 against.

SIGNED: Joe Cloquet
Joe Cloquet, Chairman
Cowlitz Tribal Council
COWLITZ INDIAN TRIBE

ATTEST: Gina Kling
Gina Kling, Secretary
COWLITZ INDIAN TRIBE

HURON POTAWATOMI
ATHENS INDIAN RESERVATION
FULTON, MICHIGAN 49052

RECEIVED
MAY 1978

May 23, 1978

Congress of the United States
House of Representatives
Washington, D.C. 20512

Dear Congressman Brown:

In its final report to congress, the American Indian Policy Review Commission recommended that "procedures be established so that all American Indian Tribes will be guaranteed their unique relationship with the United States."

December 15, 1977, the chairman of the Senate Select Committee on Indian Affairs, Senator James Abourezk, introduced S.2375. This bill would establish guidelines and set up a procedure for the Department of Interior to acknowledge a Federal relationship with numberous tribes.

This week, we learned that the Select Committee on Indian Affairs staff said, there is no interest in S.2375 and so the bill is going nowhere.

The time for action is now. The Huron Band of Potawatomi Indian people consisting of 500 plus members petitioned the Secretary to acknowledge Tribal existence and eligibility for Bureau services March 3, 1972, the Huron Band has met all the Federal Government guidelines in the past and at the present time are updating, verifying the Tribal Roll, and could meet all requirements in S.2375. The Huron Band of Indian people has the support of the State of Michigan, counties, municipalities, and local governing bodies in its quest for Federal Recognition. It is in support of S.2375. Anything you can do to keep the idea to establish concrete guidelines alive would be appreciated.

Sincerely yours,

Byron P. Schwoebell
Assistant Director

Congressman Brown
Page Two
May 23, 1978

cc: James K. Abourezk, Chairman (D. South Dakota)
Dewey F. Bartlett, (R. Oklahoma)
Mark O. Hatfield (R. Oregon)
John Melcher, (D. Montana)
Howard M. Metzenbaum (D. Ohio)

May 25, 1978

Senator James E. Abouresk
3317 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Abouresk:

This is to request your support for moving the legislation included in S 2375 out of Committee for action at the earliest possible date.

S 2375 has great implications for Indian people across our Nation as well as in North Carolina, and we will greatly appreciate your support and assistance in this matter.

We need your support to move S 2375 out of Committee and your endorsement in the U. S. Senate.

Sincerely,

Ed T. Chavis
Jo A. Oxendine
Myra Strickland
Christean C. Hunt
Mary L. Richardson
Violet R. Willis
Carmella Locklear
Pauline Deese
Mitchell Locklear
Barbara S. Barton
Monroe Chavis
Cynthia L. Blue
Jamie M Locklear
Shirley M. Locklear
Sylvia I Johnson
Marilyn Hunt
Sarah Hunt
Theresa Locklear
Margaret Locklear
Virgie L. Locklear
Robert Cummings
Cathy L. Locklear
Sharon L Deese

Please direct all responses to:

Janie Maynor Locklear, Chairperson
NC Recognition Committee
Post-Office Box 68
Pembroke, N. C. 28372

Phone: (919) 521-2401

North Carolina General Assembly
House of Representatives
State Legislative Building
Raleigh 27611

REC'D JUN 13 1978

LURA S. TALLY
30TH DISTRICT
HOME ADDRESS: 3100 TALLYWOOD DRIVE
FAYETTEVILLE, N. C. 28303

June 6, 1978

COMMITTEES:
HIGHER EDUCATION, CHAIRMAN
APPROPRIATIONS
EDUCATION, VICE CHAIRMAN
HUMAN RESOURCES, VICE CHAIRMAN
CONSTITUTIONAL AMENDMENTS
COURTS AND JUDICIAL DISTRICTS
JUDICIARY I
PUBLIC UTILITIES

The Honorable Robert Morgan
1251 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Bob:

I am writing to urge the passage of U. S. Senate Bill 2375 which will set Federal recognition for Indians. This bill will help our North Carolina Indians by giving them the opportunity to apply for Federal recognition. Hopefully, this will help them to receive services through the Bureau of Indian Affairs which would certainly help the Indian people in our area.

I shall look forward to hearing from you and shall appreciate any suggestions that you have toward expediting this bill.

Sincerely yours,

Lura S. Tally

LST:j

Copies to:
The Honorable James Abouresk
The Honorable Howard Metzelboum
The Honorable John Melcher
The Honorable Mark Hatfield
The Honorable Henry Bellman

[The following list of tribes which have applied to the Bureau of Indian Affairs for recognition was submitted by Victor E. Roybal, Jr., tribal secretary for the Tiwa Indian Tribe, Pueblo Tortugas, San Juan de Guadalupe, New Mexico]

Alphabetization of Groups

Aboriginal Swinomish
Mr. Harold Guard
Post Office Box 111
Friday Harbor, Washington 98250

Antelope Valley Indian Community
Mr. Wesley Dick
Post Office Box 35
Coleville, California 96107

Cherokee Indians of Georgia, Inc.
Mr. James Big Oak Lowery
1516 14th Avenue
Columbus, Georgia 31901

Chickahominay Indian Tribe, Inc.
Mr. O. Oliver Adkins
RFD 1, Box 226
Providence Forge, Virginia 23140

Chinook Indian Tribe, Inc.
Post Office Box 372
Ilwaco, Washington 98624

Choctaw Nation United Remnant Band
Sherlene Sheep Woman or
Solomon Brokeshoulder
Box 283
Bellbrook, Ohio, 45305

Choctaw of La Salle, Rapides, and
St. Tammany Parrishes
& Mr. Norris Tyler
Route # 1 Box 37
Mora, Louisiana 71455

Coos Tribe of Indians
Mr. Russell Anderson
Box 3506
Coos Bay, Oregon 97420

Creek Indian Confederacy
Mrs. Vivian Williamson
Route #7 Box 663
Pensacola, Florida 32506

Creek Nation East of the Mississippi
Mr. Houston L. Mc Ghee
Route #3, Box 287
Atmore, Alabama 36502

Creeks East of the Mississippi
Mr. John Wesley Thomley
Post Office Box 123
Molino, Florida 32577

Cowlitz Tribal Council
2815 Dale Lane East
Tacoma, Washington 98424

Eastern Pequot Indians of Connecticut
Mr. Roy Sebastian
Lantern Hill Reservation
RFD #7, Box 941
Ledyard, Connecticut 06339

Etowah Cherokee
Mr. L. D. Hester
1276 North Avenue N.E.
Alanta, Georgia 30307

Four Hole Indian Organization
Mr. Robert Davidson
Route #3, Box 42 F
Ridgeville, South Carolina 29472

Gay Head Wampanoag
State Road, Gay Head RFD
Chilmark, Massachusetts 02535

Happy Camp Karok Tribe, Inc.
David A. Titus
Post Office Box 716
Happy Camp, California 96039

Hassanamisco
Ms. Lura Ciscoe Brough
Hassanamisco Reservation
Grafton, Massachusetts 01519

Hatteras Tuscarora
Mr. Vermon Locklear
Route #3 Box 47 A
Maxton, North Carolina 28363

Houma Alliance
% Governor
State of Louisana
Baton Rouge, Louisana 70804

Huron Potawatomi Band
Mr. David Mackety
Route #1
Fulton, Michigan 48505

Idaho Delaware
% Mr. W. Anthony Park
Park and Meuleman
Box 2762
Boise, Idaho 83701

Ione Band
% Sacramento Area Director
Bureau of Indian Affairs
Post Office Box 15740
1800 Tribute Road
Sacramento, California 95813

Jamestown Clallam
Jamestown Tribal Council
Route # 2
Sequim, Washington 98382

Jena Band of Louisiana Choctaw
Mr. Clyde Jackson
Post Office Box 212
Trout, Louisiana 71342

Kikiallus
Mr. Alfonso Sampson
Route #1B
Mount Vernon, Washington 98273

Kumeyaay Corporation
931 West Main Street
El Cajon, California 92020

Lac Vieux Desert
Mr. John Mc Geshick
Post Office Box 118
Watersmeet, Michigan 49969

Little Shell Band of North Dakota
Ms. Mary Z. Wilson
Dunseith, North Dakota 58329

Lower Band of Chinooks
Mr. Kent Elliott
Skamokawa, Washington 98647

Lower Muskogee Creek
Mr. Neal Mc Cormick
Route # 1
Tama Reservation
Cairo, Georgia 31728

Mashpee Wampanoag
Route #130
Mashpee, Massaachusetts 02649

Mattaponi
Mr. Curtis L. Custalow, Sr.
Box 178
West Point, Virginia 23181

Mitchell Band of Indians
Dennis F. Gerlt
187 Spring Street W.
Friday Harbour, Washington 98250

Mohegan Indian Community
Mohegan Citizens Action Committee
Mr. Richard H. Fawcett
105 Fitch Hill Road
Uncasville, Connecticut 06382

Mono Lake Indian Community
Mr. Louie Andrews
Post Office Box 131
Lee Vining, California 93541

4.

Munsee-Thames River Delaware
Mr. William Lee Little Soldier
1536 Stone Street
Pueblo, Colorado 81003

Muskogee Creek Indian Nation
East of the Mississippi
Mr. Sam Blue
Post Office Box 817
Perry, Florida 32347

Narragansett
% Allan van Gestel
Goodwin, Procter and Hoar
28 State Street
Boston, Massachusetts 02109

Noo-Wha-Ha
Arlene Seody
%Stella Long
1120 Huff Road
Burlington, Washington 98233

Northern Michigan Ottawa
911 Franklin
Petoskey, Michigan 49770

Northwest Florida Creek Indian Council
Mr. Buford Rolin
Post Office Box 462
Pensacola, Florida 32592

Orleans Karok Council
Ms. La Verne Glaze
or Mark Allison
Post Office Box 265
Orleans, California 95556

Pamunkey
Techuseh Deerfoot Cook
King William, Virginia 23083

Pascua Yaqui
825 W. Calle Ventura
Tucson, Arizona 85705

5,

Paugusset Nation
Mr. Aureluis H. Piper
Golden Hill Indian Reservation
427 Shelton Road
Trumbull, Connecticut 06611

Piscataway
Mr. William Redwing Tayac
Route # 7 Box 162 A
Waldorf, Maryland 20601

Plumas County Indians, Inc.
Mr. Dan Vincent
Post Office Box 833
206 Main Street
Greenville, California 95947

Principal Creek Indian Nation
East of the Mississippi
Mr. Arthur Turner
Post Office Box 201
Florala, Alabama 36442

Rappahannock
Mr. Captain O. Nelson
Indian Neck, Virginia 23077

Samish Tribe of Indians
% Superintendant
Western Washington Agency
3006 Colby Street, Federal Bldg.
Everett, Washington 98201

San Juan de Guadalupe Tiwa
Mr. Victor E. Roybal, Jr.
1120 South Locust Street
Las Cruces, New Mexico 88001

Schaghticoke Tribe of Indians
% Mr. John Crosskey
Bay, Berry and Howard
One Constitution Plaza
Hartford, Connecticut 06103

6.

Shawnee Nation United Remnant Band
Mr. Tukemas or Mr. Nas'Naga
Post Office Box 609
Xenia, Ohio 45385

Shinnecock
Mrs. Harriett Crippen Cumps
Post Office Box 1286
Southampton, New York 11968

Snohomish Tribe of Indians
Mr. Alfred Cooper
Snohomish Corresponding Secretary
5101 27th Avenue West
Everett, Washington 98203

Snoqualmie
Ms. Helen C. Harvey
20204 117th S. E.
Kent, Washington 98031

Steilacoom Tribe
Joan K. Marshall
2212 A Street
Tacoma, Washington 98402

Stillaguamish Tribe of Indians
Mrs. Ester Ross
Post Office Box 552
Bellingham, Washington 98225

Swan Creek and Black Rive Chippewas
% Mrs. Edna M. Silverthorne
Box 107
Dixon, Montana 59831
or
Swan Creek and Black River Chippewas
% Mr. Robert Lantis
Box 624
Ottawa, Kansas 66067

Tcinook Indians
Mrs. Karleen F. Mc Kenzie
5621 Alamont Drive
Klamuth Falls, Oregon 97601

7.

The Duwamish Indian Tribe
15614 First Avenue South
Burien, Washington 98148

Tigua
Post Office Box 17579
Ysleta Station
El Paso, Texas 79917

Traditional Kickapoo Indians
of Eagle Pass
% Mr. Walter W. Broemer
Executive Director
Texas Indian Commission
1011 Alston
Livingston, Texas 77351

Tunica-Biloxi Indian Community
of Louisiana
% Governor
State of Louisiana
Post Office Box 44243
State Capitol
Baton Rouge, Louisiana 70604

Tuscaroras of Eastern North Carolina
Mr. Lewis Strickland
Route 3 Box 67 A
Maxton, North Carolina 28364

Tuscola United Cherokee Tribe
of Florida, Inc.
Mr. H. A. Rhoden
Post Office Box S
Geneva, Florida 32732

United Cherokee Nation
Mr. Thunderbird Webber
418 Flint Avenue
Albany, Georgia 31701

Waccamaw Siouan Development Association
Mr. Jim Vann
Route 1 Box 109
Bolton, North Carolina 28423

Warroad Chippewa
James Boucha
Box 336
Warroad, Minnesota 56763

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